

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

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5 In the Matter of:

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7 PURDUE PHARMA L.P.,

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9 Debtor.

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12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 February 17, 2021

17 10:13 AM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

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25 ECRO: ART

1 HEARING re Notice of Agenda/ Agenda for February 17, 2021

2 Hearing

3

4 HEARING re Motion to Intervene filed by KatieLynn B Townsend
5 on behalf of Dow Jones & Company, Inc., Boston Globe Media
6 Partners, LLC, and Reuters News & Media, Inc. (ECF #2022)

7

8 HEARING re Statement/ The Ad Hoc Group of on-Consenting
9 States' Statement Regarding the Motion to Intervene and
10 Unseal Judicial Records by Dow Jones & Company, Inc.,
11 Boston Globe Media Partners, LLC, and Reuters News & Media,
12 Inc. (related document(s)2022) filed by Andrew M. Troop on
13 behalf of Ad Hoc Group of Non-Consenting States (ECF #2065)

14

15 HEARING re Statement in Support of Motion to Intervene
16 (related document(s)2022) filed by Paul A. Rachmuth on
17 behalf of Ad Hoc Committee on Accountability (ECF #2066)

18

19 HEARING re Response /The NAS Children Ad Hoc Committee's
20 Joinder to the Ad Hoc Group of Non-Consenting States'
21 Statement Regarding the Motion to Intervene and Unseal
22 Judicial Records by Dow Jones & Company, Inc., Boston Globe
23 Media Partners, LLC and Reuters News & Media, Inc. (related
24 document(s)2065) filed by Scott S. Markowitz on behalf of Ad
25 Hoc Committee of NAS Babies (ECF #2090)

1 HEARING re Statement of The Raymond Sackler Family In
2 Respect of The Motion To Intervene And Unseal Judicial
3 Records By Dow Jones & Company, Inc., Boston Globe Media
4 Partners, LLC, and Reuters News & Media, Inc. (related
5 document(s)2022) filed by Gerard Uzzi on behalf of The
6 Raymond Sackler Family (ECF #2132)

7
8 HEARING re Debtors' Limited Objection to the Media
9 Intervenors' Motions to Intervene and Unseal Judicial
10 Records and Cross-Motion to Seal Certain Judicial Records
11 (related document(s)1828, 2188) filed by Benjamin S.
12 Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2252)

13
14 HEARING re Statement of the Mortimer Sackler Initial Covered
15 Sackler Persons in Respect of the Reply in Support of
16 Motions to Unseal Judicial Records by Dow Jones & Company,
17 Inc., Boston Globe Media Partners, LLC, and Reuters News &
18 Media, Inc. (related document(s)2288) filed by Jasmine Ball
19 on behalf of Beacon Company. (ECF #2301)

1 HEARING re Limited Objection of the Raymond Sackler Family
2 to the First and Second Motions to Unseal Judicial Records
3 by Media Intervenors Dow Jones & Company, Inc., Boston
4 Globe Media Partners, LLC, and Reuters News & Media, Inc.
5 (related document(s)2022, 2188) filed by Gerard Uzzi on
6 behalf of The Raymond Sackler Family (ECF #2360)

7
8 HEARING re Mortimer D. Sackler ICSPs Limited Objection to
9 the Media Intervenors Motion to Intervene and Unseal
10 Judicial Records (related document(s)2022, 2188) filed by
11 Jasmine Ball on behalf of Beacon Company. (ECF #2361)

12
13 HEARING re Reply to Motion to Unseal (related
14 document(s)2022) filed by KatieLynn B Townsend
15 on behalf of Dow Jones & Company, Inc., Boston Globe Media
16 Partners, LLC, and Reuters News & Media, Inc. (ECF #2288)

17
18 HEARING re Motion to Amend Proposed Order (related
19 document(s)2022) filed by KatieLynn B Townsend on behalf of
20 Dow Jones & Company, Inc., Boston Globe Media Partners,
21 LLC, and Reuters News & Media, Inc. (ECF #2039)

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1 HEARING re Notice of Adjournment of Hearing on Motion to
2 Intervene and Unseal (related document(s)2022) filed by
3 KatieLynn B Townsend on behalf of Dow Jones & Company, Inc.,
4 Boston Globe Media Partners, LLC, and Reuters News & Media,
5 Inc. (ECF #2091)

6
7 HEARING re Stipulation/ Notice of Filing of Stipulation and
8 Agreed Order Regarding Media Intervenors' Motion to Unseal
9 Materials Filed in Connection with UCC Privilege Motions and
10 Adjournment of Hearing on Media Intervenors' Motion to
11 Unseal (related document(s)2022) Filed by Benjamin S.
12 Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2136)

13
14 HEARING re Stipulation and Agreed Order Signed on 12/15/2020
15 Regarding Media Intervenors' Motion to Unseal Materials
16 Filed in Connection with UCC Privilege Motions and
17 Adjournment of Hearing on Media Intervenors' Motion to
18 Unseal (related document(s)2022) (ECF #2140)

19
20 HEARING re Debtors' Ex Parte Motion for Entry of an Order
21 Shortening Notice with Respect to Debtors' Motion for Entry
22 of an Order Sealing Judicial Documents (related
23 document(s)2252) filed by Benjamin S. Kaminetzky on behalf
24 of Purdue Pharma L.P. (ECF #2253)

25

1 HEARING re Declaration of Jon Lowne in Support of the
2 Debtors' Limited Objection to Media Intervenors' Motions to
3 Intervene (related document(s)2252) filed by Benjamin S.
4 Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2254)

5

6 HEARING re Second Motion to Intervene and Unseal filed by
7 KatieLynn B Townsend on behalf of Dow Jones & Company, Inc.,
8 Boston Globe Media Partners, LLC, and Reuters News &
9 Media, Inc. (ECF #2188)

10

11 HEARING re Debtors' Limited Objection to the Media
12 Intervenors' Motions to Intervene and Unseal Judicial
13 Records and Cross-Motion to Seal Certain Judicial Records
14 (related document(s)1828, 2188) filed by Benjamin S.
15 Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2252)

16

17 HEARING re Statement of the Raymond Sackler Family in
18 Respect of the Second Motion to Unseal Judicial Records by
19 Media Intervenors Dow Jones & Company, Inc., Boston Globe
20 Media Partners, LLC, and Reuters News & Media, Inc. (related
21 document(s)2132, 2188) filed by Gerard Uzzi on behalf of The
22 Raymond Sackler Family. (ECF #2265)

23

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1 HEARING re Statement of the Mortimer Sackler Initial Covered
2 Sackler Persons in Respect of the Reply in Support of
3 Motions to Unseal Judicial Records by Dow Jones & Company,
4 Inc., Boston Globe Media Partners, LLC, and Reuters News &
5 Media, Inc. (related document(s)2288) filed by Jasmine Ball
6 on behalf of Beacon Company. (ECF #2301)

7
8 HEARING re Limited Objection of the Raymond Sackler Family
9 to the First and Second Motions to Unseal Judicial Records
10 by Media Intervenors Dow Jones & Company, Inc., Boston
11 Globe Media Partners, LLC, and Reuters News & Media, Inc.
12 (related document(s)2022, 2188) filed by Gerard Uzzi on
13 behalf of The Raymond Sackler Family (ECF #2360)

14
15 HEARING re Mortimer D. Sackler ICSPs Limited Objection to
16 the Media Intervenors Motion to Intervene and Unseal
17 Judicial Records (related document(s)2022, 2188) filed by
18 Jasmine Ball on behalf of Beacon Company. (ECF #2361)

19
20 HEARING re Reply to Motion to Unseal (related document(s)
21 2022) filed by KatieLynn B Townsend on behalf of Dow Jones &
22 Company, Inc., Boston Globe Media Partners, LLC, and
23 Reuters News & Media, Inc. (ECF #2288)

1 HEARING re Debtors' Ex Parte Motion for Entry of an Order
2 Shortening Notice with Respect to Debtors' Motion for Entry
3 of an Order Sealing Judicial Documents (related document(s)
4 2252) filed by Benjamin S. Kaminetzky on behalf of Purdue
5 Pharma L.P. (ECF #2253)

6
7 HEARING re Declaration of Jon Lowne in Support of the
8 Debtors' Limited Objection to Media Intervenors' Motions to
9 Intervene (related document(s)2252) filed by Benjamin S.
10 Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2254)

11
12 HEARING re Mortimer D. Sackler ICSPs Limited Objection to
13 the Media Intervenors Motion to Intervene and Unseal
14 Judicial Records (related document(s)2022, 2188) filed by
15 Jasmine Ball on behalf of Beacon Company. (ECF #2362)

16
17 HEARING re Debtors' Limited Objection to the Media
18 Intervenors' Motions to Intervene and Unseal Judicial
19 Records and Cross-Motion to Seal Certain Judicial Records
20 (related document(s)1828, 2188) filed by Benjamin S.
21 Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2252)

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1 HEARING re Debtors' Ex Parte Motion for Entry of an Order
2 Shortening Notice with Respect to Debtors' Motion for Entry
3 of an Order Sealing Judicial Documents (related document(s)
4 2252) filed by Benjamin S. Kaminetzky on behalf of Purdue
5 Pharma L.P.(ECF #2253)

6
7 HEARING re Motion to Intervene filed by Katie Lynn B
8 Townsend on behalf of Dow Jones & Company, Inc., Boston
9 Globe Media Partners, LLC, and Reuters News & Media, Inc.
10 (ECF #2022)

11
12 HEARING re Second Motion to Intervene and Unseal filed by
13 KatieLynn B Townsend on behalf of Dow Jones & Company, Inc.,
14 Boston Globe Media Partners, LLC, and Reuters News &
15 Media, Inc. (ECF #2188)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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17 GEORGE CALHOUN

18 EDWARD NEIGER

19 SHEILA BRINBAUM

20 HAYDEN COLEMAN

21 TZERINA DIZON

22 J. JEFFREY

23 NATASHA LABOVITZ

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25 MARY JO WHITE

1 HAROLD WILLIFORD
2 MARC SKAPOF
3 ARTEM SKOROTENSKY
4 BROOKS BARKER
5 SARA BRAUNER
6 MITCHELL P. HURLEY
7 KEVIN MACLAY
8 ARIK PREIS
9 CYRUS MEHRI
10 GERARD MCCARTHY
11 STEPHEN THOMASCH
12 LISA ACQUAVIVA
13 GERARD UZZI
14 HUNTER BLAIN
15 LINDA IMES
16 BENJAMIN KAMINETZKY
17 JEREMY KLEINMAN
18 ALEX LEES
19 GARRETT LYNAM
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21 FRANK VELLUCI
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23 MICHAEL BAIRD
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1 CATRINA SHEA
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7 MARA LEVENTHAL
8 JAKE HOLDREITH
9 XIAOYU DUAN
10 HAYLEY THEISEN
11 PAUL SCHWARTZBERG
12 GEORGE O'CONNOR
13 JASMINE BALL
14 ANDREW TROOP

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1 P R O C E E D I N G S

2 THE COURT: Good morning, this is Judge Drain.

3 We're here on in re Purdue Pharma L.P., et al. Today's
4 calendar is completely telephonic. You should identify
5 yourself and your client the first time you speak, but also,
6 in light of that, identify yourself thereafter so that the
7 court reporter and I can put together your voice and your
8 name.

9 There's one authorized recording of these
10 hearings, that's taken by Court Solutions, which provides a
11 copy on a daily basis to our clerk's office. If you want a
12 transcript of your hearing, you should contact the clerk's
13 office to arrange for the production of one. Because these
14 hearings are telephonic, you should keep your phone on mute
15 unless you're speaking, at which time, of course, you should
16 unmute yourself. So, with that introduction, I have the
17 amended agenda provided by the Debtors, and I'm happy to go
18 down the agenda in the order set forth on it.

19 MR. HUEBNER: Thank you, Your Honor. Good
20 morning, this is Marshall Huebner of Davis Polk. Am I
21 coming through clearly?

22 THE COURT: Yes, yes.

23 MR. HUEBNER: So, Your Honor, as the agenda
24 reflects, the Debtors are not the movant on any motions for
25 today, and in fact, with a very, very, very small exception,

1 we're not actually the Respondent on any motions either.
2 There's one very small item still outstanding. We have two
3 motions pending for March 1st. Those motions reflect very
4 broad consent on the relief being requested and are
5 themselves appropriately laconic. I will be more laconic
6 still, and actually have nothing further to say, and would
7 propose to turn the podium over to the Movant on the first
8 agenda item.

9 THE COURT: Okay, very well.

10 MS. TOWNSEND: Good morning, Your Honor. This is
11 Katie Townsend with the Reporters Committee for Freedom of
12 the Press on behalf of the Media Intervenors, Dow Jones &
13 Company, Inc., Boston Globe Media Partners, LLC, and Reuters
14 News & Media, Inc. Since we are the Movants on the first
15 agenda item, I thought I would go ahead and get started. I
16 would ask first if Your Honor had any questions or specific
17 order that he would like me to address the remaining issues,
18 or I could just, by way of background, provide kind of an
19 update on where the parties are now.

20 THE COURT: Okay, well, let me let you know my
21 state of preparedness, here. I, of course, held a hearing
22 on these two motions, both of which sought to unseal
23 portions of the filed record relating to the motion by the
24 Creditors' Committee to determine the applicability of the
25 privileges asserted by the ASIB, Sackler families as well as

1 the Debtors in the ongoing discovery between the parties.

2 At that hearing, I directed further briefing as
3 well as asked the parties to focus more intently and more
4 specifically on whether the remaining documents that were at
5 issue -- and obviously, they've been very considerably
6 narrowed down by all the parties, including the Media
7 Intervenorers since the media motions were filed, and I gather
8 that process happened as far as the narrowing down is
9 concerned, and that the remaining documents at issue, all
10 other ones either being released or agreed to be released,
11 or alternatively, there being agreements, which I think had
12 already been set forth on the record, to the redaction of
13 personally identifying information and the like, is limited
14 to the identities of commercial counterparties - current
15 commercial counterparties, that is, with the two sides are
16 the Sackler family and a small remaining dispute with regard
17 to two exhibits, two declarations, submitted in connection
18 with the Unsecured Creditors' Committee's motion.

19 I have the additional briefing submitted by the
20 Side A and Side B Sackler parties that were submitted on
21 February 7th as well as the reply or the combined reply by
22 the Media Intervenorers to those filings, which was filed
23 February 14th. So, I also understand that the Debtors have
24 narrowed down their request for continued redaction of
25 portions of the two exhibits that I previously mentioned -

1 Exhibits 123 and 137. So, that's the state of my
2 information so far. So, if you want to update me from
3 there, that's fine.

4 MS. TOWNSEND: Thank you, Your Honor. And I would
5 say I have little to add to that summary. You will recall
6 that, at the prior hearing in this matter, I informed the
7 Court that the Media Intervenors were in a position to
8 voluntarily withdraw their pending motions to unseal without
9 prejudice except as to those 17 remaining documents that we
10 contended are still, you know, contend are still improperly
11 sealed or overly redacted. The majority of those - 15 of
12 those 17 documents - are what the parties have been
13 referring to as privileged law materials and there are two
14 categories of redactions urged by the Sackler family, Side A
15 and Side B, that are in dispute. The other two documents,
16 as Your Honor has pointed out, are Exhibit 123 to the
17 October 14th 2020 Leventhal Declaration and Exhibit 137 to
18 the November 18th, 2020 Pries Declaration. Those are
19 documents that were redacted by the Debtors, purportedly on
20 the ground that they contained confidential commercial
21 information under § 107(b).

22 As Your Honor indicated yesterday, we, along with
23 the Court, were informed by Debtors' counsel that they were
24 -- had voluntarily removed some of the redactions that were
25 in dispute as to both of those documents, Exhibit 123 and

1 Exhibit 137. There are still redactions that remain,
2 including a full paragraph at Exhibit 137, which is the 2017
3 memo from Purdue's president and CEO, Mr. Landau, expressing
4 his views about the challenges facing the company. We
5 certainly welcome the Debtors' decision to abandon certain
6 of those redactions to those two documents. It remains that
7 the Debtors bear the burden of demonstrating that the
8 remaining redactions fall within the scope of § 107(b)1 and
9 that there's a compelling need to preclude public access.

10 It's still our position that they haven't met that
11 burden, and as we emphasized, I think, in our prior
12 briefing, Your Honor, it's not clear to us how unsealing
13 these documents in their entirety, particularly given that
14 they are now four or five years old at least, would give an
15 unfair advantage to any competitor of Purdue Pharma and
16 (indiscernible) showing us the need to that end to the
17 Court. So, I recognize Your Honor has those documents. I
18 think our position is that they should be -- the remaining
19 redactions should be unsealed.

20 And with respect to the remaining 15 documents,
21 Your Honor, those -- I can address those as well. Those are
22 the privileged law materials that were filed with the Court.
23 They're currently sealed in their entirety, however, the
24 parties are now largely, I think it's fair to say, in
25 agreement that they should be unsealed with certain

1 redactions. My clients, for example, are not challenging
2 the redaction of PAI and certain names of individuals in
3 those records. I think that's reflected in the record
4 before the Court.

5 Where they're in disagreement is on the Sackler
6 family's position that 1) the names of indefinite
7 counterparties should be redacted, and 2) the names of
8 public-facing businesses owned in whole or in part by the
9 Mortimer Sackler family initial covered persons of Side A
10 should be redacted. The Media Intervenors' position is that
11 neither category of information can be properly redacted.
12 Certainly, the Sackler family have not demonstrated that the
13 information falls within the scope of an exception to §
14 107's broad public access mandate or demonstrated a
15 compelling need to redact this information.

16 First, with respect to the investment counterparty
17 information, the Court heard argument on this issue at the
18 last hearing in terms of the new arguments that have been
19 asserted by the Raymond Sackler family in their supplemental
20 filing. I won't spend too much time addressing the
21 suggestion that the Media Intervenors did not timely object
22 the redaction of this information in the privilege log
23 materials. I think it's evident that we followed the
24 process and the timeline stipulated to by the parties, and
25 so ordered by the Court for disputing the basis for any

1 redactions.

2 Moreover, while it's certainly true that every
3 Court has supervisory power of its own records and files, as
4 we indicated in our brief, that does not mean that the Court
5 can seal or redact material in a manner that's at odds with
6 statutory or constitutional mandates. I think here, it's
7 clear that § 107 and the First Amendment provide the
8 relevant standards that must be met for sealing a redaction
9 of this information to be permitted.

10 So, I would focus, Your Honor, on what I think is
11 the dispositive issue with respect to the investment
12 counterparty information, and that's the Side B's argument
13 that this information falls within the scope of confidential
14 commercial information for § 107(b)1. And as we argued in
15 our brief, it doesn't - not under the Second Circuit's
16 definition of that term. As you know, Your Honor, § 107
17 makes any paper filed in a bankruptcy matter a public record
18 open for public inspection unless one of § 107's express,
19 enumerated exceptions applies. And those exceptions,
20 including § 107(b)1, are narrowly construed. Consistent
21 with that, the Second Circuit on Orion Pictures interpreted
22 commercial information in that context to be information, if
23 disclosed, would give an unfair advantage to competitors by
24 revealing details about the entity's commercial operations.

25 It's not --

1 THE COURT: Do you -- can I interrupt you? Do you
2 think that Orion Pictures limited its definition of
3 commercial information in § 107(b)1 to that circumstance, as
4 opposed to applying what the bankruptcy judge found there,
5 which was that it did, in fact -- the disclosure would, in
6 fact, assist competitors?

7 MS. TOWNSEND: I think it did, Your Honor, and I
8 think subsequent case law that we cite in our briefing
9 suggest that that narrower interpretation is consistent with
10 the intent of § 107, which is the broad disclosure mandate,
11 and it's consistent with the plain language, I think, of the
12 Second Circuit's decision in Orion Pictures. I think it's
13 not -- and I want to really underscore this. The Side B
14 seems to suggest that this is a sort of catchall exception
15 that allows sealing or redaction of anything that could
16 conceivably harm their economic interests. And --

17 THE COURT: Right -- which is what Judge Gerber
18 and Judge Glenn found years after Orion Pictures was
19 decided.

20 MS. TOWNSEND: I think there are --

21 THE COURT: Judge -- I'm sorry, Judge Gerber and
22 Judge Bernstein found, years after Orion Pictures was
23 decided. They both say harm, or provide a commercial
24 disadvantage in --

25 MS. TOWNSEND: I think --

1 THE COURT: -- in Dryer and Global Crossing.

2 MS. TOWNSEND: And I think with respect to Global
3 Crossing, the cases that are cited that we point to, Your
4 Honor, that were cited by Side B in their briefing, we noted
5 and we explained with respect to Global Crossing, the
6 information could have given an unfair advantage to
7 competitors as part of a sale process, so I don't think -- I
8 think the language of that case, it doesn't -- the actual
9 outcome of that case doesn't suggest a much broader, let
10 along the kind of clearly broad interpretation of just any
11 kind of economic harm that I think is being posited by the
12 Sackler families here. It doesn't suggest that that's
13 actually what the court was doing in Global Crossing. In
14 that case, the court found that public disclosure of the
15 information, which were included dates by which the Debtors
16 were required to sell certain assets and information would
17 give potential buyers substantial leverage. So, that's the
18 kind of competitive disadvantage that the Second Circuit in
19 Orion Pictures was focused on and talking about and limiting
20 the scope of § 107(b)1 to. So, I don't think --

21 THE COURT: Well, let me ask you -- and of course,
22 you would have the right, in an evidentiary hearing, to
23 cross-examine the declarants. It was submitted, in
24 connection with the more recent responses, by the Raymond
25 Sackler family, but they allege - one of them being the

1 manager of the home office - that in the past, when the
2 identity of commercial -- of the commercial counterparties
3 was revealed, those counterparties, in several instances,
4 either cashed out the fund or refused to continue in
5 business. How is that any less of a competitive
6 disadvantage than disclosing the information about the
7 decision making for the hedge fund at issue in in re Dryer,
8 LLP as far as putting the hedge fund at a disadvantage?

9 In Dryer, the decision-making analysis, Judge
10 Bernstein found, could have been used by competitors to, in
11 essence, take strategies and ideas from the hedge fund that
12 wanted that information redacted in the Lynam and Vellucci
13 declarations. It's asserted that the investment would
14 simply be cashed out or precluded from being taken, and
15 presumably, someone else would step in, in the home office's
16 place, a third party, to take that position. It seems to me
17 that, if you limit it to competitive disadvantage, it's not
18 really saying enough because you're still at a competitive
19 disadvantage.

20 MS. TOWNSEND: I think, Your Honor, the argument
21 that's been made by the Raymond Sackler family is that
22 disclosure of counterparty information could encourage - and
23 I acknowledge this, or I acknowledge that this is the
24 argument they're making - that it could encourage these
25 investment counterparties to stop doing business with the

1 Sackler families because of the reputational effects which
2 would, or in their mind -- which would, in turn, if they
3 stopped doing business with them, in turn hurt the Sackler
4 family financially. So, I would posit that that is the
5 case. But it's also not the kind of -- it's not information
6 that's provided about the business to a competitor that
7 would provide -- that would create a competitive -- unfair
8 competitive disadvantage.

9 In our briefing, Your Honor, embarrassment, or
10 harm to reputation, be it from the disclosure of non-
11 scandalous, non-defamatory, truthful information isn't
12 sufficient to warrant unsealing under § 107(b), so I think
13 there's a very distinct difference between information that,
14 if disclosed, could just by virtue of associating the
15 counterparty with the Sackler family, that may cause them
16 not to want to be associated with them publicly and pull
17 back, that is quite different than the type of information
18 that § 107(b)1 was intended to protect, which is commercial
19 information which, if it was given to a competitor, would
20 place the Debtor at a competitive disadvantage. It's just a
21 different -- I think it is quite a different analysis, and I
22 think it really is a reputational argument that the Sackler
23 family is positing, which is just not, as we point out in
24 our briefing, a basis for sealing.

25 THE COURT: Well, let me explore that a bit. The

1 Sacklers have not opposed, ultimately, the release of
2 information that could be derogatory to their reputation.
3 What they're opposing is the disclosure of the actual names
4 of the commercial counterparties in which they have invested
5 their money, on the basis that those counterparties would
6 withdraw or close out the funds or withdraw access to the
7 commercial deals that they expose them to.

8 There's no suggestion, I think, although this
9 should be explored, that the commercial counterparties,
10 since this is prospective information, are engaging in or
11 assisting in the Sacklers' alleged misconduct, which I agree
12 with you, would be reputational. This seems to be something
13 at a different level. It's not like, for example, a
14 complaint, as was the case in Food Management, that asserted
15 that the Debtors' counsel had assisted in misconduct by the
16 Debtor, and therefore was being sued for that, to which the
17 Debtors' counsel responded, not under § 107(b)1, which is
18 the commercial section - which by the way, doesn't refer to
19 competition at all - and instead responded under (b)2, which
20 is scandalous or defamatory matter, and Judge Glenn very
21 correctly said that, in that context, unsubstantiated harm
22 to the law firm's reputation is not sufficient for that type
23 of relief.

24 MS. TOWNSEND: Correct, Your Honor, but I think
25 that where the reputational harm is being asserted is

1 reputational harm to the investment counterparties merely by
2 their association with the Sackler family and therefore --

3 THE COURT: Well, the counterparties aren't making
4 the motion. It's the Sacklers that are making the motion
5 and they want to prevent the counterparties from withdrawing
6 based on -- I'm using - I'm inferring what the Sacklers are
7 suggesting - cancel culture. Not because the counterparties
8 are doing anything wrong, but simply that they'd rather just
9 not have their name in the paper and they're withdrawing.
10 But it's not the counterparties are not the ones that are
11 seeking this relief. So, it doesn't -- it isn't really
12 based on the counterparties' reputation. In fact, I did
13 have a question for you. What is the purpose in naming them
14 as opposed to just describing them generically?

15 MS. TOWNSEND: I think from our perspective, Your
16 Honor, the documents themselves, in our view, should be
17 redacted to the greatest extent possible, and those names
18 are reflected in the documents. Unless there's some basis,
19 unless there's some ground to redact them, and we don't --
20 respectfully, we think that there is no basis within § 107
21 to redact the names of these investment counterparties, if
22 they don't fall within the scope of § 107(b)1, then they
23 should be redacted.

24 THE COURT: Well, maybe I wasn't -- maybe I wasn't
25 clear in my question. I'm trying to figure out why the

1 names are important, as opposed to the nature of them, which
2 is already part of the public record, I guess. Although,
3 if, for example, it was asserted that the counterparties
4 themselves had assisted the Sacklers in doing the things
5 that the underlying motion here, i.e. the Committee's
6 motion, asserted was a reason for granting the motion, I
7 would understand the -- I think, the argument that the names
8 are sought to be withheld for an improper purpose, i.e.,
9 simply because of the alleged effect on their reputation of
10 being claimed to be involved by the Creditors' Committee in
11 the facts that they alleged were the basis for my granting
12 their motion to find that the privilege didn't apply.

13 But if the purpose here is solely to harm the
14 Sacklers by limiting their ability to engage in business
15 now, I'm not sure -- I mean, isn't that just a commercial
16 factor? That really isn't reputation at that point.
17 Doesn't that just go right to the plain language of §
18 107(b)1, which again, says: "To protect an entity with
19 respect to commercial information". You focus on commercial
20 again. If the information is just to prevent these parties
21 from engaging in commerce with the Sacklers, it has no other
22 purpose, then wouldn't that be covered by § 107(b)1?

23 MS. TOWNSEND: I'm not sure, Your Honor, when you
24 refer to purpose, I mean, I think the perspective of the
25 Media Intervenors is that the records that have been filed

1 in this case, consistent with § 107(a) should be public to
2 the greatest extent possible. I don't think --

3 THE COURT: No, but I'm focusing on the actual
4 language. "Commercial information."

5 MS. TOWNSEND: Right.

6 THE COURT: Congress made a distinction in
7 bankruptcy cases between commercial information that was
8 protected - and I fully agree with you that there have to be
9 extraordinary circumstances to apply § 107(b)1 - but -- and
10 that would include, for example, precluding the protection
11 if it was asserted that the reason for the sealing was
12 simply to protect the movant from reputational injury,
13 particularly when that reputational injury was in the
14 context of the fundamental conduct of the bankruptcy case,
15 as was the case in Food Management, but if the purpose of
16 seeking the relief under § 107(b)1 is purely commercial,
17 then it would seem to me that (b)1 would apply, and here I'm
18 trying to figure out whether there's any purpose served by
19 the disclosure other than to provide commercial harm.

20 MS. TOWNSEND: Well, first, Your Honor, I think
21 commercial information is the language in the statute. I
22 think, as we discussed in our briefing, the Second Circuit
23 in Orion Pictures has --

24 THE COURT: Well, let's just accept that I don't
25 believe the Second Circuit cabined the language to

1 competitive disadvantage. The finding by the bankruptcy
2 judge was that there was a competitive disadvantage, and so
3 that's what the Second Circuit focused on in responding,
4 again, to a contrary argument that said, oh, no, it has to
5 be a trade secret. Circuit said, no. A competitive
6 commercial advantage is enough. That wasn't limiting it to
7 competitive disadvantage. But again, I go back to my basic
8 point, which is, if you're running a family office that
9 manages the family's investments, as one of the witnesses
10 does, then isn't it at a competitive disadvantage versus
11 other family offices and hedge funds if it's not allowed to
12 invest in certain investments solely based upon the
13 disclosure of counterparties' names?

14 MS. TOWNSEND: It would be allowed -- I mean, it
15 would not be prohibited from doing so. I think the concern
16 that has been raised by the Sackler family is that the
17 reputational harm of being associated with the Sackler
18 family would cause or could cause some of these
19 counterparties to no longer want to do business with them.
20 And that's --

21 THE COURT: All right, and how is that even
22 reputational harm? I mean, the United States government is
23 perfectly happy to take taxes from the Sackler family. Are
24 they suffering -- is the government suffering reputational
25 harm for doing that?

1 MS. TOWNSEND: And Your Honor, I'm not --

2 THE COURT: Isn't just a cold -- isn't just a cold
3 and calculated business determination by these funds that
4 they just don't want to see their name in the paper and be
5 the subject of tweets?

6 MS. TOWNSEND: That may be the case. I'm not sure
7 that the -- I think I would characterize it in the argument
8 that the Sackler families appear to be making which is that
9 -- or which we understand them to be making which is that
10 these -- if they are -- the public association would then
11 cause them to withdraw from doing business with them.
12 That's my understanding of their argument. I'm not
13 suggesting that that is, in fact, the case, that they would
14 somehow be reputationally harmed by their association with
15 the Sackler family. I think that's the argument that the
16 Sackler family is making to urge the redaction of this
17 material. Their claim is that if these companies are
18 publicly associated with them, then they will pull back,
19 which will ultimately harm the Sackler family's sort of
20 general economic interests.

21 And I think our point is that even if, Your Honor,
22 you take a broader view of what § (b)1 protects, you know,
23 it protects something broader than just information that --
24 about a business that, if provided to a competitor, would
25 put the business at a competitive disadvantage, if it's

1 broader than that, I think it's still not so broad as to
2 reach the sort of, quite frankly, speculative -- because
3 we're sort of relying on the theory that these companies
4 will -- these investment counterparties will, in fact,
5 because their name is disclosed, pull back, which you know,
6 we're just -- that argument depends upon that, and that that
7 -- even if that occurs, that that's the kind of harm that §
8 (b)1 is intended to shield. And I think our position is
9 that it is not, even if you take a broader -- a broader view
10 of what § (b)1 was intended to protect.

11 THE COURT: Well, I agree with you that the
12 original pleadings were speculative on this point, but I now
13 have -- which was not the case, for example, in the GM
14 opinion by Judge Glenn that you cited two declarations which
15 actually list a number of times when funds redeemed the
16 investments out of the fund and -- although this is somewhat
17 vague, Mr. Lynam says: "Additionally, I'm aware of or have
18 been informed of at least six other financial institutions
19 that terminated their bank and their broker-dealer
20 relationships with the Jonathan Sackler family, or decided
21 to avoid or limit business with the Jonathan Sackler family.
22 These events occurred between May 2019 and late 2020." So,
23 I'm not sure how speculative it is at this point. Again,
24 you're perfectly entitled to cross-examine these two people,
25 Mr. Lynam and Mr. Vellucci, who also details similar actions

1 by those with business relationships with the Sacklers in
2 Paragraph 5 as to how real it is, and of course, one could
3 make that point that, where there is someone that does make
4 the calculated decision that, although it may not affect our
5 reputation truly, we just don't want to deal with this,
6 there may be plenty of others who say, I will invest the
7 money and take my fees out of it. But I guess at this
8 point, I don't -- I'm not sure it really is speculative,
9 given those declarations.

10 MS. TOWNSEND: I think, Your Honor, it's
11 speculative to the extent that it relies on the notion that
12 because this is -- there -- similar -- perhaps similar
13 situations have occurred in the past that they're
14 necessarily going to occur in the future by virtue of these
15 particular redactions no longer being redacted on these
16 particular names no longer being redacted. And I would note
17 that again, I think that, to the extent the type of harm
18 that's being asserted is sort of a generalized economic harm
19 that could flow simply from disclosure of an association, I
20 -- that is -- it's beyond what § 107(b)1 was intended to
21 shield, and I think it's no different --

22 THE COURT: Are you relying on anything besides
23 Orion for that proposition?

24 MS. TOWNSEND: In addition to Orion, Your Honor,
25 we cited -- I'm just going to look at the case. We also

1 cited the in re Motors Liquidation Company, Southern
2 District of New York case that also indicates that harm --
3 information provided to a competitor that would provide a
4 competitive -- that would put the debtor at a competitive
5 disadvantage is the type of information that is intended to
6 be protected by § 107(b)1.

7 THE COURT: But neither of these cases say it's
8 the only information that's intended to be protected.

9 MS. TOWNSEND: I think they're defining commercial
10 information. And I would posit, Your Honor, that even if
11 you take a broader view of what could be competitively
12 disadvantageous, that would be covered by § 107(b)1, the
13 information or the argument that's being made with respect
14 to these investment counterparties is really no different
15 than an argument that the attorneys in this case don't want
16 to be associated, or don't want their business to be harmed,
17 don't want other clients to maybe not want to work with
18 them, if they are found to be representing, or they are
19 publicly disposed to be representing the Sackler families,
20 therefore -- and then they won't want to represent them and
21 then therefore, they should be able to seal their
22 identities. I mean, I think that this -- it's difficult to
23 draw a line if the economic harm is the result of individual
24 choices being made by third parties just by virtue of the
25 fact that the documents are not being sealed or that there's

1 transparency there.

2 THE COURT: Actually, there's a really good case
3 that does draw the line: in re Gordon Properties, LLC. 536
4 B.R. 703 Bankr. E.D. Va. And again, most of these cases
5 that deal with reputation - in fact, I think all of them -
6 are ones under § 107(d)2: scandalous or defamatory, not
7 (b)1. And in fact, for example, in Food Management Group,
8 the law firm didn't make any attempt to make the showing
9 under (b)1.

10 MS. TOWNSEND: And that's precisely our point,
11 Your Honor, is that this is -- it's difficult to make that
12 showing and that that's not the showing that's been
13 attempted to be made here. It's an effort to sort of push
14 some of these reputational harm considerations granted to a
15 third party, directed at a -- you know, reputational harm to
16 a third party that could have economic effects on the
17 Sackler family, to push that under (b)1, and I think that is
18 precisely what our argument is, that that's not proper, that
19 your embarrassment or harm to reputation are not grounds for
20 redaction under § 107, and that under 107 -- certainly not
21 under § 107(b)1, which is designed to protect, again,
22 confidential commercial information that would place, in our
23 view, a party at a competitive disadvantage.

24 But again, is the relationship between these
25 parties sort of confidential commercial information of the

1 kind - and that really is the question - of the kind §
2 107(b)1 was intended to prevent? Is that the kind -- is
3 another third party deciding not to do business with the
4 Sackler family, is that the harm that § 107(b)1 was intended
5 to shield against? And I would say, Your Honor, that I
6 think, to the extent that's the way it's interpreted, it has
7 -- it has a few limits. I think you could make an argument
8 that is -- has that sort of two-step process and this could
9 have a negative economic impact on a Debtor, I think is the
10 party that would normally be at issue. I think that the --
11 drawing a line would be difficult to do.

12 I think -- so, our argument would be that it is
13 not within the scope of § 107(b)1 - not that we're trying to
14 put it under § 107(c), but that we're saying if the concern
15 is reputational harm, it should be sitting under that
16 provision. If it can't fit under that provision, it doesn't
17 fit under § 107(b)1.

18 THE COURT: Well, again, I agree with you
19 completely that reputational harm is not a basis unless it's
20 analyzed with far more proof that, in fact, something is in
21 fact scandalous or defamatory and this point of case law
22 detailing the burden on that, that a movant that wants
23 something sealed has to meet. But I guess it seems to me
24 that, in looking at the purpose of the rule, and the
25 statements of its purpose, which is to safeguard the

1 integrity, quality, and respect of our judicial system,
2 particularly in the context of bankruptcy proceedings, which
3 are ongoing and therefore need to be transparent generally,
4 that one can fairly easily make a distinction where it
5 appears that the only harm is commercial as opposed to
6 reputational, that -- and that harm doesn't go to the
7 bankruptcy case or the process, i.e., unlike the law firm in
8 Food Management, I don't think that the basis for wanting
9 this information has anything to do with the bankruptcy
10 case.

11 But certainly, the names of these parties on a
12 privilege log had nothing to do with the UCC's motion, which
13 went to other parties, and the nature of the communications,
14 not the actual recipient or subject, the name as opposed to
15 the subject matter of the communication. So, I think you
16 actually could cabin it quite easily by saying, look, if the
17 only purpose here is to harm, as opposed to disclose
18 information that has some bearing on the bankruptcy case,
19 then I don't see why it wouldn't fall within the exception.
20 And I'm not sure that is the case here, but I know that I
21 asked you a couple of times and you haven't really answered:
22 what's the difference between simply naming the type of
23 business as opposed to the actual name other than to hope
24 that they would create a story -- that that would create a
25 story that would lead to harm to the Sacklers?

1 MS. TOWNSEND: I think I would -- I mean, I would
2 reject, Your Honor, that the notion that my clients are
3 looking in some way to harm the Sacklers or have a purpose
4 of doing so. I think certainly the records that have been
5 unsealed in this case to date --

6 THE COURT: I'm sorry, I want to be clear. I'm
7 not saying that that is your purpose. I guess I'm thinking
8 along the lines that Judge Gerber thought in Global Crossing
9 where he made that very distinction. Exo had a purpose to
10 mess up the sale. He said he didn't see how the Media
11 Intervenors, some of whom are the same people you're
12 representing, had that same purpose, but the effect was the
13 same, and there was no other effect. And that's where I'm
14 focusing on. Is there any other effect here besides the
15 risk of these entities stopping doing business with the
16 Sacklers?

17 MS. TOWNSEND: Your Honor, I would say that, not
18 knowing what those -- the names are, not having access to
19 the information that's redacted, and in fact, not having
20 seen the privilege logs, I mean, those documents are still
21 sealed in their entirety, it is difficult for me to -- the
22 materials that these names are reflected on, it's difficult
23 for me to point specifically to the potential value to
24 members of the public of that specific information because I
25 don't have it. What I'm saying is --

1 THE COURT: Well, that's a very -- I agree, that's
2 a very fair point. For example, if these entities, turned
3 out, were laundering money for the Sacklers, somehow, I
4 completely understand your point. And the burden is really
5 on the Sacklers to show that these are just prospective
6 future relationships. I understand that point.

7 MS. TOWNSEND: And I don't think that the -- we're
8 -- we -- I don't think that we're suggesting misconduct on
9 the part of -- and I don't -- I would be clear that we're
10 not necessarily suggesting the conduct on the part of any of
11 these entities, but whether or not that's the case, I don't
12 think it alters the burden on the Sackler families to
13 demonstrate harm that would flow. And I think I will go
14 back to the --

15 THE COURT: I agree with that. I think that's
16 true. But on the other hand, it seems to me, if the only
17 reason is dog -- for the story would be dog bites man, as
18 opposed to man bites dog, it would seem to me that the harm
19 here is purely commercial.

20 MS. TOWNSEND: I think I would say, Your Honor,
21 that I would just posit as a sort of hypothetical along
22 these lines, there's certainly information that has been
23 unsealed in this case that, if you were talking
24 specifically, let's say, about -- maybe we shouldn't talk
25 about this case in particular, I can just say as a

1 hypothetical, if we're talking about a situation where a
2 debtor was in bankruptcy, there was information that wasn't
3 -- that was -- that, if it were unsealed would cause
4 reputational harm to the debtor and therefore, economic
5 harm, because perhaps, or arguably could cause economic harm
6 because a party might boycott that debtor's company if they
7 learned of X information, let's say. Again, I think the
8 problem with that kind of argument, which is effectively the
9 arguments being made here, that there's a commercial harm
10 because -- that would flow from some reputational harm,
11 potentially, and I'm just taking out the third party in this
12 hypothetical, that that would be -- I think that would
13 clearly not be sufficient. I think that the debtor in that
14 kind of situation would have to demonstrate that the -- that
15 -- it would have to demonstrate something other than just
16 mere reputational harm.

17 And certainly, there could be economic
18 consequences that flow from that, from reputational harm,
19 whether it's to the Debtor or to a third party, but those
20 aren't the types of direct, concrete, competitive harms that
21 (b)1 is intended to protect against. And so, I think I
22 would, again, sort of press Your Honor on that scope of (b)1
23 and whether this type of -- whether the Sackler families,
24 excuse me, are able to make -- to demonstrate -- you know,
25 meet their burden to demonstrate that this information is

1 within the scope of that exemption.

2 THE COURT: Okay.

3 MS. TOWNSEND: And I realize we've been -- Your
4 Honor has been gracious and letting the argument argue for a
5 bit of time. I would like to, if possible, move to the
6 second category of information that the Sackler families
7 argue should be redacted, and that's the names of businesses
8 owned in whole or in part by the Mortimer Sackler family
9 initial (indiscernible) Side A. We think that information,
10 too, should not be redacted. I think there were different
11 rationales posited for that. So, would Your Honor like me
12 to move to that argument?

13 THE COURT: Yes. Yeah, that's fine. This is the
14 § 107(c) argument.

15 MS. TOWNSEND: Correct, Your Honor. And § 107(c)1
16 permits redaction of certain identifying information in
17 order to protect individuals to the extent the Court finds
18 the disclosure of such information would create undue risk
19 of identity theft or other unlawful injury to the individual
20 or the individual's property. That's the language of (c)1,
21 and as we point out in our briefing, in in re Abex, Inc. - I
22 think I'm pronouncing that correctly, the person who seeks
23 to prevent disclosure must support that with a concrete
24 showing of potential harm. Here, no individual at purported
25 risk of harm has been identified. Side A would like to

1 shield the names of business entities, and that the first --
2 that the speculative, I would say, theory that the -- that
3 is being proffered in support of that is that because
4 members of the Sackler family have been the target of public
5 ire and unquestionably, Your Honor, I think the language --

6 THE COURT: Can I -- can I interrupt you? And
7 this is really more of a question for the Mortimer Sackler
8 side. § 107(c)1, the introductory clause says: "The
9 Bankruptcy Court, for cause, may protect an individual with
10 respect to the following types of information" "To the
11 extent the court finds the disclosure of such information
12 would create undue risk of identity theft or unlawful injury
13 to the individual or the individual's property".

14 The circuit has long interpreted the word
15 "individual" in the Bankruptcy Code as applying to people,
16 real people, as opposed to businesses. It did so, first and
17 foremost, in interpreting what was then 362(h) and is now
18 362(k) of the Bankruptcy Code in the Chateaugay case, which
19 says: "except as provided in Paragraph 2, an individual
20 injured by any willful violation of a stay provided in this
21 section shall recover actual damages including costs and
22 attorneys' fees, and, in appropriate circumstances, may
23 recover punitive damages."

24 The court said, Congress knows how to distinguish
25 between individual and corporate entity in the Bankruptcy

1 Code and here, individual means person. And the same word
2 is used in § 107(c)1. So, maybe before we should go
3 further, I should hear from counsel for the Mortimer Sackler
4 side on this point.

5 MS. MONAGHAN: Sure, Your Honor. This is Maura
6 Monaghan from Debevoise & Plimpton on behalf of the Mortimer
7 Sackler family. So, looking at § 107(c)1, it refers to the
8 Bankruptcy Court's for cause may protect an individual with
9 respect to the following types of information, and that
10 includes (c)1(b), other information.

11 THE COURT: Right.

12 MS. MONAGHAN: So, in this case, the Mortimer
13 Sackler family individuals, the initial covered Sackler
14 parties, are the movants. They're seeking the protection
15 that the information to be protected includes the
16 identification of these public-facing businesses, and I want
17 to emphasize, it's only the public-facing businesses that we
18 are addressing in this request. It's not all businesses.
19 And I think that that's a common sense reading of the
20 statutory provision that prevents the Bankruptcy Court from
21 otherwise being helpless to protect the unlawful injury to
22 individual's property that is intended to be protected and
23 explicitly referenced in § 107(c)1.

24 THE COURT: So, the property here would be their
25 ownership interest in these public-facing businesses?

1 MS. MONAGHAN: Yes, the businesses themselves are
2 property belonging to the members of the Mortimer Sackler
3 family.

4 THE COURT: But -- well, all right.

5 MS. MONAGHAN: And I would point out, Your Honor,
6 that otherwise, you'd really be left without an ability to
7 protect against what we think is a very real prospect of
8 injury. I acknowledge that it's difficult to quantify that
9 risk, but for example, if you look at Exhibit 2 to the Ball
10 declaration, it shows how, in response to court documents
11 being publicized by the media, one of these people posted,
12 "so let's find their addresses and burn their" - and I'll
13 omit the adjective because of the Court's dignity - "houses
14 down." And so, there is a real risk that court documents
15 that publicize the identification of these businesses - say,
16 for example, and this is a hypothetical example, you know,
17 it says there's a coffee shop in New York City owned by the
18 Sacklers, it becomes a physical target of that injury.

19 THE COURT: Well, the businesses haven't been
20 identified, right? I don't know what they are --

21 MS. MONAGHAN: They are -- the information
22 proposed to be redacted is the names of the public-facing
23 businesses.

24 THE COURT: But I mean the nature of them hasn't
25 been identified.

1 MS. MONAGHAN: No. We have only identified them
2 as public-facing.

3 THE COURT: Right, so, you know, there could be a
4 wide -- you know, a wide range of property and I really
5 wonder what -- I guess I understand physical harm but you
6 know, beyond that, I'm not quite sure that this statute
7 really is intended to cover, for example, a drop in a public
8 company's share price because a substantial amount of the
9 shares are revealed to be owned by an individual who makes
10 this motion.

11 MS. MONAGHAN: Correct, Your Honor, but that's not
12 information that we are seeking to shield. These are
13 entities that are privately owned, in whole or in
14 substantial part, by members of the Sackler family.

15 THE COURT: But again, I don't know what they are.
16 I don't know if they're investment vehicles, for example, I
17 don't know if they're, like, hedge funds that then own stock
18 in lots of other companies --

19 MS. MONAGHAN: No, Your Honor --

20 THE COURT: -- if they're brick and -- or if
21 they're brick and mortar businesses, you know. If -- how
22 they're named, how easy it is to actually find what they
23 own. None of that is really disclosed.

24 MS. MONAGHAN: Well, Your Honor, we find ourselves
25 a little bit between a rock and a hard place on that. If we

1 disclose them in a court filing to which the Media
2 Intervenorors have access, we sort of go in a circle.

3 THE COURT: Well, I can always review that
4 information in camera and then talk about it generically on
5 the record.

6 MS. MONAGHAN: If Your Honor would like us to do
7 that, we certainly can. I can say, when we identify public-
8 facing businesses, we do not mean shares in funds that own
9 small percentages. We're talking about brick and mortar
10 businesses that people could walk up to and throw a brick
11 through the window of.

12 THE COURT: Okay. All right, so, I interrupted --
13 I interrupted Ms. Townsend. I just wanted to address that
14 up-front issue. So, Ms. Townsend, you can keep going.

15 MS. TOWNSEND: Thank you, Your Honor. And I'll
16 respond to that. I think we cited in our briefing in re
17 Motions Seeking Access to 2019 Statements, which is a 2018
18 case in the Delaware Bankruptcy Court that I think really --
19 I think brings to light the type of information that §
20 107(c) was intended to protect in that case - social
21 security numbers, medical histories, individuals' names and
22 addresses of individual elderly claimants. It -- I think
23 that's the kind of information that § 107(c)1 is geared
24 toward. And in fact, you know, my clients have not
25 challenged the redaction of things like home addresses and

1 phone numbers, even the names of certain individuals.

2 To be clear, what we're talking about here are the
3 names of businesses owned in whole or in part by Side A
4 parties, and no showing has been made, quite frankly, that
5 the redaction of those names is warranted. The mere fact
6 that an -- and because I'm not going to dispute that the
7 individual members of the Sackler family have been the
8 target of hateful online posting, but that doesn't translate
9 to every employee of every business in any way associated
10 with the Sackler family will be targeted for violence. I
11 think that that --

12 THE COURT: Again, we're not focusing on the
13 employees, because that's not going to be disclosed. It's
14 the businesses themselves that is the basis for this §
15 107(c) argument.

16 MS. TOWNSEND: Correct, Your Honor, and the
17 argument that's being made by the Side A parties is that if
18 the names of those public-facing businesses are going to
19 disclose, then employees there could be targeted for
20 violence, the buildings themselves could be targeted with
21 vandalism, and I think that's a bridge -- quite honestly, a
22 bridge too far. It's very speculative, it's very
23 attenuated. There's no examples of any threats directed at
24 any business or any other entity that has been affiliated
25 with the Sackler family. And quite honestly, Your Honor,

1 there have been many, many examples of museums and other
2 institutions or entities that have been affiliated with the
3 Sackler family that have not been targeted with violence.
4 And certainly, again, there's nothing in the record to
5 suggest that redacting the names -- solely the names -- and
6 you're right Your Honor, solely the names of these
7 businesses, is the kind of harm that would justify redaction
8 under § 107(b)1. And I would be -- or (c), rather, excuse
9 me.

10 And I'd be remiss, Your Honor, if I didn't point
11 out -- and we point this out in our briefing, that the
12 seriousness of these concerns is, quite frankly, strongly
13 undercut by the fact that Side A only raised it at the last
14 hearing before Your Honor. There was no issue concerning
15 any type of safety concern or vandalism concern or anything
16 along those lines that was raised in the conferment sessions
17 or with the Court prior to the last hearing. And at the
18 last hearing, there was a statement concerning potential
19 safety issues that the Side A parties suggested would --
20 they wouldn't -- would make them want to argue for redacting
21 some certain names. It didn't indicate at the time that
22 they were talking about business entities.

23 And so, I think that, from our perspective, Your
24 Honor, there's simply no basis, certainly no showing has
25 been made that that information should be redacted. And

1 finally, Your Honor -- and I ask that the submissions that
2 were made under seal by Side A, in connection with their
3 supplemental briefing, be unsealed. There was no motion to
4 seal, there was no specific showing that that information
5 should be sealed and filed with the Court, and I would also
6 just note that in the publicly filed versions of the
7 supplemental brief, it refers, in substance, to what was --
8 what was filed under seal. So, I don't really understand
9 the basis for that filing being made under seal, but I would
10 ask, at this point, that those documents be unsealed as
11 well.

12 THE COURT: Okay.

13 MS. TOWNSEND: Thank you, Your Honor. And I'm
14 happy to answer additional questions about that specific
15 category of redactions.

16 THE COURT: Great. So, Ms. Ball, let's address
17 that last point first. Was there a seal in motion with
18 respect to this limited objection that was filed on the 7th?

19 MS. MONAGHAN: No, Your Honor. We had explained -
20 - this is Ms. Monaghan, I'm sorry, from Debevoise &
21 Plimpton.

22 THE COURT: Oh, I'm sorry. Right.

23 MS. MONAGHAN: As we had explained -- it's
24 understandable because it was Ms. Ball's declaration. As we
25 had explained in Ms. Ball's declaration and in

1 correspondence to the Court, we filed the URLs and the full
2 images under seal because otherwise, you're giving the
3 public directions to this hateful, vitriolic speech and we
4 didn't want to draw further attention to it. The unredacted
5 versions were provided to Ms. Townsend. So, it's not the
6 case that they were without the information in full. And
7 so, the information is available to all of the counsel that
8 were parties to this motion and the explanation for why the
9 URLs were not provided was disclosed in the brief.

10 THE COURT: All right, but you know, I have a
11 specific practice for dealing with sealing motions, and
12 something really can't be filed on the docket unless there
13 is such a motion in redacted form. So, I think it's
14 incumbent upon you to make such a motion and if it is
15 limited, as you've said, and not to the whole declaration
16 and the exhibits, it might be granted, it might not. If
17 it's just limited to, you know, a reference to a threatening
18 tweet, I guess I would understand why that might be sealed.
19 But unless you make that motion promptly, I think Ms.
20 Townsend's right. The whole thing needs to be filed.

21 MS. MONAGHAN: All right. We will promptly make
22 that motion.

23 THE COURT: Okay. And again, the practice on that
24 is you email chambers the redacted and unredacted document
25 or documents with the motion. If the Court feels that the

1 motion is clear and clearly supported, then I may issue an
2 order then, or alternatively, like my colleagues, I may
3 direct a hearing on it. But I need a motion.

4 MS. MONAGHAN: I understand.

5 THE COURT: So, on the -- let's go to the other
6 point, main point, I think that Ms. Townsend raised, which
7 is, the proof here for this request under § 107(c) as
8 opposed to (b)1, is limited, it appears to me, to threats
9 made of the Sacklers, or to the Sacklers themselves.
10 There's no real discussion of threats made to any assets or
11 businesses tied to the Sacklers, and in fact, the Sacklers
12 are publicly tied to various institutions which have not
13 experienced, it's asserted, and there's nothing to the
14 contrary in the pleading, vandalism or the like. What is
15 your response to that?

16 MS. MONAGHAN: Well, Your Honor, counsel referred
17 to the case in re Motion Seeking Access to 2019 Statements,
18 which makes clear that the assessment of the risk is forward
19 looking, and that the standard does not require evidence of
20 injury having occurred in the past or under similar
21 circumstances. We have shown you --

22 THE COURT: But in that case -- in that case, one
23 could reasonably infer the risk of injury because the
24 personally identifiable information was going to be
25 disclosed, which, within itself had that -- carried that

1 risk. I mean, there is -- that doesn't mean the past can't
2 be prologue. I don't think you have to show that there's
3 already been a threat to one of these public facing
4 businesses, but on the other hand, I think it's a legitimate
5 response to say that there are publicly identified
6 institutions that have a tie to the Sacklers and they have
7 not been threatened other than, perhaps, with you know,
8 cancel culture.

9 MS. MONAGHAN: Well, Your Honor, I would again
10 point to Exhibit 2 to the Ball declaration which says,
11 "Let's find their addresses and burn their... houses down."

12 THE COURT: I understand but --

13 MS. MONAGHAN: So, that's their property and so
14 the distinction that the media counsel is drawing is that
15 the people who made these threats to their residential
16 property won't extend those threats to their business
17 property. That seems like a pretty fine distinction to draw
18 when you're not talking about ownership of a share of stock.
19 It is also the case that these are -- businesses are unlike
20 institutions like museums where the link to the Sacklers is
21 more remote, and those institutions have nonetheless had
22 protests and the like. These are entities that are owned by
23 the Sacklers where the same degree of remoteness, people
24 have other reasons for staying their hand with respect to
25 the Metropolitan Museum, than they might have with respect

1 to a restaurant owned by a member of the Sackler family.

2 And I think otherwise, the level of proof that the
3 Media Intervenors are demanding requires you to wait until
4 the horse is out of the barn to close the door.

5 THE COURT: Well, the protests were not unlawful,
6 right?

7 MS. MONAGHAN: No, the protests were not unlawful,
8 as far as I know. I mean, I don't know if they might have
9 violated some city ordinance or something, but I would also
10 note that we raised in our papers that, under the Brown v.
11 Maxwell case, the court can apply a balancing test and in
12 this case, we are talking about information with respect to
13 a discovery motion that has not been heard. Many of the
14 entries are ones to which the official committee has
15 withdrawn its challenge, and when you're balancing the
16 information value versus the risk, in this case, we would
17 submit, for the reasons that you were discussing with
18 respect to the § 107(b)1 analysis, the informational value
19 is very low. Disclosing that these businesses are owned by
20 Sacklers is not particularly meaningful.

21 THE COURT: Well, I'd like -- I guess I'd like to
22 push back on that. Isn't a focus, a prime focus, of the
23 incredibly detailed discovery that has taken place in this
24 case tied to the Sacklers' assets?

25 MS. MONAGHAN: Your Honor, that's the --

1 THE COURT: So that, you know, the parties in
2 interest can evaluate whether the settlement proposed by
3 them would be a proper settlement, one of the factors being
4 the ability of the settling party to pay a judgment if a
5 judgment were ever obtained. And that in addition to that,
6 there's discovery as to transfers that the Sacklers made.
7 So, I think that assets owned by the Sacklers are, to me,
8 much more front and center than business counterparties with
9 the Sacklers are.

10 MS. MONAGHAN: Your Honor, but that discovery is
11 with respect to ability to pay. It's not with respect to,
12 you know, what is the name of this particular public-facing
13 business. Because once you have the name, you know, it's
14 very well to say you can redact the address. It's pretty
15 easy to figure out the address once you have the names. And
16 I don't think that purpose has to do with disclosure of
17 names recorded on a privilege log.

18 THE COURT: Well, it does let you figure out what
19 they own, or something that they own.

20 MS. MONAGHAN: Yes, Your Honor, but that
21 information, for all the reasons that have been discussed,
22 have been transparently disclosed to all the parties in
23 interest that are negotiating the resolution. The question
24 here is whether the Media Intervenors have access to those
25 names, not whether those names have been provided to counsel

1 who are doing due diligence on the assets and the ability to
2 pay.

3 THE COURT: Right. I guess I'm just focusing on
4 your balancing point. I mean, I think the ACNS case at the
5 circuit level, albeit it's the Third Circuit instead of the
6 Second, although, interestingly, the Third Circuit seems to
7 interpret the Orion Pictures case consistent with its
8 observation, states that: "Every court has a supervisory
9 power over its own records and files, and access has been
10 denied where court files might have become a vehicle for
11 improper purposes." And it would seem to me that it may be
12 that an improper purpose to obtain this information would be
13 if it were solely to harm the Sacklers, but I was positing a
14 perfectly legitimate purpose, which is to identify the
15 assets.

16 MS. MONAGHAN: Your Honor, I don't think that the
17 -- that question seems more relevant to whether the
18 motivation of the official committee in filing the document
19 was an improper purpose or not, and that is not what we are
20 contending. It does not seem to have the same significance
21 to the question of whether the Media Intervenors should have
22 access to the document or not. As I read the Brown v.
23 Maxwell balancing test, that's looking at, sort of, the
24 value of the information to the general public. The reason
25 that they're drawing the distinction between discovery

1 disputes and actual evidence, for example, is because of the
2 lower value to the public of that information.

3 In this case, no one is contending that the
4 information has been withheld from the parties making
5 decisions about the settlement, they're not contending that
6 there is something about -- you know, there's no litigation
7 in the Bankruptcy Court with respect to the nature of these
8 assets that is requiring the Court to look into what they're
9 worth, or how they're held, or where they're located. What
10 happened was, there was a discovery dispute still unheard,
11 and at the time of that discovery dispute, which was
12 subsequently narrowed, the privilege log contained entries
13 that almost, you know, sideways, referred to these entities.
14 The harm that that risk is not in any way related to the
15 purpose of that initial motion.

16 THE COURT: Okay.

17 WOMAN 1: Your Honor, if I may, this is
18 (indiscernible).

19 THE COURT: Do either of you have anything more to
20 add to this aspect of the argument?

21 MS. MONAGHAN: I would just ask that --

22 THE COURT: On the § 107(c) point.

23 MS. TOWNSEND: Yes. Just to clarify, Your Honor,
24 I think counsel for Side A cited Brown v. Maxwell. I think,
25 as we covered in the last hearing, and as addressed in our

1 briefing, the common law presumption of access and balancing
2 under the common law test is not really what's at issue
3 here. The standard in § 107(c)1 under § 107(c)1, Side A
4 bears the burden of making a concrete showing of harm that
5 would flow from disclosure of the information that they want
6 to redact. So, this notion of balancing simply isn't the
7 right standard, and we would contend that they have not made
8 that showing. But I just wanted to clarify that because I
9 think there's been some confusion, or I shouldn't say
10 confusion, but there's been some differing arguments on that
11 point.

12 THE COURT: Right. Okay. Ms. Townsend, let me
13 ask you: do you -- would you -- do you want to cross-examine
14 the two witnesses for the other side of the Sackler family's
15 opposition, Mr. Lynam and Mr. Vellucci, knowing that I have
16 their declarations here and this wasn't scheduled is an
17 evidentiary hearing, but you know, I have their declarations
18 and they say what they say.

19 MS. TOWNSEND: It would --

20 THE COURT: Either -- you either want to cross-
21 examine them now or you know, at an evidentiary hearing
22 limited to their cross examination that I would hold
23 shortly, and probably by Zoom or Teams or something like
24 that, so people can actually see them, see the Court, and
25 see counsel.

1 MS. TOWNSEND: Your Honor, I would suggest -- and
2 I appreciate that offer, and I think we -- I think we would.
3 I think what I would suggest prior to that is that the
4 parties -- that the remainder of the privilege log materials
5 be unsealed. I understand that, you know --

6 THE COURT: I thought -- I want to make sure I
7 heard. You mean be unsealed?

8 MS. TOWNSEND: Correct, so the privilege log
9 materials right now are entirely sealed and --

10 THE COURT: Right, but I thought there was an
11 agreement to unseal them, right, except for these specific
12 limited identities?

13 MS. TOWNSEND: That's correct, Your Honor, but we
14 don't have those at this point in time --

15 THE COURT: Right, no, I agree. That -- right,
16 there's -- I don't see any reason to hold off on that, given
17 the agreement to unseal them.

18 MS. TOWNSEND: Right, and then I think that would
19 help us, Your Honor, the Media Intervenors, review what's
20 been redacted for these purposes, and that -- we could then
21 inform the Court whether or not we think it makes sense to
22 cross-examine the Debtors -- or excuse me, I apologize, the
23 Declarants -- cross-examine the Declarants as to the §
24 107(b)1 arguments as to the counterparties.

25 THE COURT: Right, okay. Okay. Why don't we turn

1 to the other issue, which is the issue with the Debtors? I
2 will come back to this with a ruling, but I want to cover
3 that issue first. So, I guess what I would like to do with
4 that, I have, I believe, the new proposed redactions of
5 Exhibit 123 and 137. When we left off in January, I said I
6 would have to review the proposed redactions then to see
7 whether I could simply rule on the papers. And I reviewed
8 them and informed the parties that I could not simply review
9 on the papers because it didn't leap out to me whether the
10 proposed redactions properly fit within the framework of §
11 107(b)1, and for these purposes, I think the framework is a
12 lot clearer than what we've been discussing in connection
13 with the Raymond Sackler objection.

14 And I needed to hear from, primarily, the Debtors
15 as to why they felt that they did fit within the framework.
16 Since then, the Debtors, as we noted, reduced the number of
17 redactions, but I think I still have the same -- the same
18 issue. So, I think I need to hear from the Debtors focusing
19 first on 137 as to why the proposed more recent redactions
20 do fit the framework. Now, the first proposed redaction is
21 an easy one. It's an email, and the parties, I don't think,
22 oppose the redaction of people's emails, correct, Ms.
23 Townsend?

24 MS. TOWNSEND: That's correct, Your Honor. We
25 wouldn't challenge that redaction.

1 THE COURT: Okay, so that redaction is on Page 2
2 of Exhibit 137. And who's going to be arguing this on
3 behalf of the Debtors?

4 MR. MCCARTHY: Your Honor, for the record Gerry
5 McCarthy of Davis Polk on behalf of the Debtors. Can you
6 hear me clearly?

7 THE COURT: Yeah, I can hear you fine, thanks.
8 So, I think you need to describe this generically via these
9 two paragraphs and in other paragraphs that we're talking
10 about and highlight to me what the concern is. Obviously,
11 this is a 2017 document, and the movant, Media Intervenors,
12 have made the point that it's old, nothing can really be
13 affecting the Debtors' competitive, commercial position in
14 it today. And sometimes, when I see -- when I see some of
15 the redactions, I think I have a clear basis to disagree
16 with that because they're talking about things that are
17 clearly forward-looking, and deal with specific events that
18 -- or specific products that -- why don't we just dive in
19 here? The first bullet point on Page 2. Why does that --
20 and we can use the framework that was clearly acceptable to
21 the Second Circuit in Orion Pictures, which is competitive
22 disadvantage. Why does this paragraph's disclosure put the
23 Debtors at a competitive disadvantage?

24 MR. MCCARTHY: Absolutely, Your Honor. And I'd
25 like to first step back just to describe what this document

1 is. This is a document that was drafted, Your Honor was
2 correct, in May 2017, by the Debtors' now current Chief
3 Executive Officer. This is the sort of document that, in
4 the normal course, businesses all across the country would
5 keep confidential in full, and the Debtor has also treated
6 confidentially. They were not the ones to file this
7 document.

8 With respect to the age of the document,
9 generally, I'd only say that the Debtors accounted for the
10 age in their redactions. If this was a document dated today
11 or last month, and this applies to Leventhal 123 as well,
12 the Debtors would have withheld that document in full as
13 being commercially harmful. But turning to the first
14 redaction, Your Honor, that addresses the loss of
15 exclusivity of certain products (indiscernible). Loss of
16 exclusivity is, at bottom, an estimate of when branded
17 products will become subject to generic competition. You
18 know, a significant portion of a product's value is realized
19 during the time period where it has market exclusivity. And
20 it's -- that's generally determined by a mix of patent
21 rights and regulatory exclusivity, and something I didn't
22 know before going to the (indiscernible) is it's not a date
23 you can look up in a book. It's a probabilistic judgment.
24 It requires a legal judgment, it requires a business
25 judgment, and it can change.

1 But if information about loss of exclusivity was
2 released, that would enable competitors to craft their
3 competitor strategies in response to -- including, for
4 instance, coming in, in generic market, knowing when to
5 prepare their generic drugs for coming in. it could impact
6 patent disputes and inability to negotiate favorable patent
7 resolutions and challenges. So, in the Debtor's view, this
8 type of redaction falls at the core of what 107 was designed
9 to protect. It's confidential information, it's commercial
10 information.

11 THE COURT: And that goes to -- ultimately, you're
12 saying the fact that, referring to lost exclusivity, is not
13 something that's publicly known? It's based on an internal
14 assessment as well as external assessment?

15 MR. MCCARTHY: That's right, Your Honor. And many
16 of the redactions across the two documents relate in some
17 way to loss of exclusivity.

18 THE COURT: Right. Okay. All right.

19 MR. MCCARTHY: And I don't know, you know, if you
20 want to go line by line here or --

21 THE COURT: No, no, I agree with you --

22 MR. MCCARTHY: -- you just want me to summarize
23 the (indiscernible).

24 THE COURT: -- a lot of these deal with -- a lot
25 of these deal with the exclusivity point. So, we may go

1 line by line, but I -- on this one, and all future
2 exclusivity references, Ms. Townsend, do you have any
3 response to that?

4 MS. TOWNSEND: Your Honor, I think again, it's
5 difficult for us. Obviously, we don't have -- we're not
6 privy to what's under the redactions. I would say that,
7 with respect to loss of exclusivity issues, you know, we
8 would -- again, it's difficult for me to respond because I
9 can't see exactly what's there. To the extent that the
10 Court finds that that's information that would, if exposed
11 to a competitor, result in competitive disadvantage to the
12 Debtor, I think that would fall within the category of §
13 107(b)1. But we're not in a position, necessarily, to
14 evaluate specifically what's under those redactions.

15 THE COURT: Right. But I am, and I don't think
16 you need to be, under the case law. I conclude that this is
17 covered, this paragraph, and similar references to
18 predictions about lost exclusivity or continued exclusivity
19 in the two exhibits as well are properly protected under §
20 107(b)1, and the specific case law, including the Orion
21 Pictures case that the parties have cited. The next
22 paragraph, which is also on Page 2, doesn't deal with
23 exclusivity. It deals with current forecasts with regard to
24 a particular product.

25 I guess my question is, why would this again, if

1 it does, put the debtor at a commercial disadvantage if it
2 were disclosed?

3 MR. MCCARTHY: Your Honor, I apologize if I'm not
4 following. I think that -- if that's -- that second
5 paragraph that's redacted -- I think it does deal with
6 exclusivity, and I don't want to divulge the information but
7 it --

8 THE COURT: So LOE means exclusivity?

9 MR. MCCARTHY: Yes. What -- LOE refers to loss of
10 exclusivity, Your Honor.

11 THE COURT: All right. Okay. So my ruling stands
12 on that, then, for the same reason.

13 I have to tell you that which respect to the first
14 two redactions on the next page, they seem to me not to rise
15 to the level of what is protected under 107(b). They may be
16 -- the heading may be somewhat embarrassing, but I don't
17 think it's -- it puts you at a competitive disadvantage,
18 particularly given that we're talking again about 2017 here
19 and among other things, it's clear from the record in this
20 case that Dr. Landau, when he became the CEO, has tried to
21 change certain things, including this heading so that -- it
22 would appear to me that this is more of a past piece of
23 information as opposed to something that would prospectively
24 harm the debtors. To me, the same for the first paragraph
25 at the top of page 3 unless I'm missing something about the

1 particular product that's mentioned there.

2 MR. MCCARTHY: Well, Your Honor, let me start with
3 the first paragraph which, to say they're the most
4 (indiscernible) contains Dr. Landau's assessment of Purdue's
5 capabilities with respect to core technology in their
6 pharmaceutical products compared to competitors. This is
7 not the sort of information that any company would release.
8 The debtor as CEO's assessment of that. And if it's
9 released it could encourage competitors to take certain
10 actions -- come into market and things like that.

11 With respect to the second redaction which is the
12 -- and Your Honor's referring to the header of the bullet --
13 is that correct?

14 THE COURT: Yes, yeah.

15 MR. MCCARTHY: And that again is another
16 assessment of the debtor's CEO that, I think, demonstrates
17 the strategic focus of the debtors and is not public and is
18 not generally known, and competitors would betray commercial
19 information about the debtors to competitors.

20 THE COURT: But it's an assessment that he made
21 when he wasn't CEO, three-and-a-half years ago.

22 MR. MCCARTHY: Understood, Your Honor.

23 THE COURT: Unless the product referred to in the
24 -- is there anything about the anacronym product that's
25 referred to in the first bullet point that has any, you

1 know, (indiscernible) --

2 MR. MCCARTHY: So that anacronym refers to abuse-
3 deterrent properties of products, not a specific product.
4 (indiscernible) products that are important to the debtor.

5 THE COURT: To me, that paragraph then is too
6 generic. If I were a competitor, I wouldn't really know
7 what -- where I had achieved some position and where I
8 hadn't so I don't believe that these two items are actually
9 properly protected. They're just not -- I just can't see
10 them really putting the debtor at a -- debtors at a
11 competitive disadvantage in a way that the case law talks
12 about. And I'm guided a lot in that regard, although it's a
13 case from another jurisdiction, by -- if I could find it now
14 -- well, I'll tell you in a minute, the case that is -- I
15 found that discussion of how one distinguishes information
16 properly protected by 107 and information that doesn't. But
17 you'll have to wait for me on that.

18 The last redacted item on page 3 is a reference to
19 a particular product. Why would the disclosure of that
20 product name put the debtors at a competitive disadvantage?

21 MR. MCCARTHY: Your Honor, this paragraph --

22 THE COURT: Is this a product that's being
23 developed -- that still being developed or, you know, is
24 there some other reason why the name itself shouldn't be
25 disclosed?

1 MR. MCCARTHY: No. This is not a secret product,
2 Your Honor. This a product about which, like the
3 information is not generally known -- (indiscernible). And
4 the assessment of this product relative to other product
5 offerings, this is something that's not publicly available.
6 It's internal debtor assessment.

7 THE COURT: Okay. But unlike the first paragraph,
8 here, a specific product was identified and so a competitor
9 could in fact focus in on the assessment of that product,
10 and I think that would in fact put the debtors at a
11 competitive disadvantage. And you're saying to me that this
12 information as to this product is not public.

13 MR. MCCARTHY: That's right, Your Honor.

14 MR. HUEBNER: Your Honor, with apologies to Mr.
15 McCarthy, just for ten seconds. I know this a little bit
16 unorthodox, but I'm actually getting texts in the background
17 from the client and I just want to jump in for an extra
18 second, which is, competitors would absolutely know the
19 product and the acronym reference. And in fact, the client
20 has real concern that both to managed care and prescribers,
21 this information could be currently used against the debtors
22 to direct competitive harm. So the (indiscernible) Mr.
23 McCarthy they just happen to not have his telephone number
24 so they're texting me in the background --

25 THE COURT: Right.

1 MR. HUEBNER: I'm limited on what I can say, but
2 this acronym is something very specific. There actually is
3 a primary competitor in this market that frankly is doing
4 things that we are not doing because of things like the
5 self-injection and giving them this type of additional
6 information, in fact I am told, would be directly harmful to
7 us at the present --

8 THE COURT: I'm sorry. Are you -- you were -- are
9 you referring to the acronym in the first paragraph on this
10 page or the one we've just been talking about?

11 MR. HUEBNER: So I don't have the document open
12 because I have the text open from the client. Let me see if
13 they are -- the first paragraph.

14 THE COURT: So that's not just sort of a generic
15 description of something. It's a reference to a specific
16 product or type of products?

17 MR. HUEBNER: It's a reference to specific
18 attributes of a product that are not common and are
19 different -- that's why this -- are differentiating -- and
20 again, I don't want to overspeak because I'm not a pharma
21 expert, but, you know, what I'm hearing in the background
22 from the CEO by text is that this could likely be -- at the
23 present time lead to changes in behavior by our primary
24 competitor if they have this knowledge about the products
25 with this attribute because in the future (indiscernible)

1 market.

2 THE COURT: Okay.

3 MR. HUEBNER: Which is why, again, as the Court
4 knows, out of thousands of documents, you know, we asked for
5 a few redactions on only two documents and we then went back
6 and took another pass and we really truly only left in the
7 things that we believe satisfied the current standard.

8 THE COURT: All right. Well, all right. Based on
9 that representation as to the reference to the specific
10 product or specific range of products in this paragraph, I
11 change my mind and find that it is covered by 107(b)(1). By
12 the way, the case that I was trying to find I just found is
13 quite a recent case, In re CV -- I'm sorry -- C2R Global
14 Manufacturing, 2020 Bankruptcy Lexus 3452, Bankruptcy ED
15 Wisconsin, December 10, 2020, where the judge really goes
16 through as we're doing now almost line by line, an
17 assessment of whether language really does put the debtor at
18 a competitive disadvantage or not.

19 So turning to page 4, the summary that is referred
20 to, again, includes loss of exclusivity so that would be
21 covered. The blocked-out paragraph above it and the whole
22 section is -- I guess the question I have here is, is this
23 something that would still be applicable today? I mean,
24 this refers to something --

25 MR. MCCARTHY: Your Honor --

1 THE COURT: -- in the present time, in the present
2 -- you know, in the present tense -- again, back in May of
3 2017. Is it still applicable now, though -- the issue that
4 -- this -- the accepted bullet points is addressing -- or
5 are addressing?

6 MR. MCCARTHY: Yes, Your Honor. In some aspects,
7 this would still be applicable and this -- obviously, the
8 issue that this is addressing is an aspect of the
9 pharmaceutical business which is core to any pharmaceutical
10 business and if released could, not only give competitors
11 information about that critical function, but also impact
12 our -- the debtor's ability to partner with other entities.

13 THE COURT: I guess what I'm asking, though, is,
14 is this particular problem still a problem?

15 MR. MCCARTHY: Yes, Your Honor. If -- with
16 respect to the redactions generally, if the information
17 (indiscernible) or could not be used, we've removed those
18 redactions.

19 THE COURT: Okay. And I'm assuming I know the
20 answer to this, but I'm going to ask you anyway. This is
21 also information that is not within the knowledge of the
22 debtor's competitors already?

23 MR. MCCARTHY: This information is kept
24 confidential by the debtors.

25 THE COURT: Okay. All right. Well, I will permit

1 it to be redacted as well under 107(b).

2 The information on page 7 is really covered by my
3 earlier ruling regarding the last redaction on page 3 so I
4 don't think we need to cover it again. It would be properly
5 protected given --

6 MR. MCCARTHY: That's right, Your Honor, and the
7 next redaction is along those lines as well -- page 3. So
8 carry -- the first one carries over --

9 THE COURT: Yeah. It refers to the same product
10 and actually referring to two competitors too so that
11 clearly falls within 107(b). I didn't really have a problem
12 with the bottom redaction either which deals with -- which
13 identifies potential products for divestiture. My only
14 question, again, and you can give me a generic answer to
15 this or general answer, which is, has any of this become
16 public?

17 MR. MCCARTHY: Your Honor, I don't believe so, but
18 I'm not a hundred percent confident in that. I don't
19 believe so. This has been reviewed by the debtors and if it
20 was public it would have been redacted.

21 THE COURT: Okay. All right. Well, that would
22 have been the only issue here because this is clearly
23 something that falls within the case law under 107(b)(1).

24 I wasn't sure about the redaction at the bottom of
25 page 9, however. I wasn't sure whether this was something

1 that would simply be a potential source of media coverage or
2 embarrassment or really affects the business itself in
3 dealing with competitors.

4 MR. MCCARTHY: No, Your Honor. It's the latter
5 and this relates to Purdue Canada which is not the debtor's
6 (indiscernible) entity under the rule and Dr. Landau at the
7 time was a executive at Purdue Canada and (indiscernible)
8 tips forth a particular strategy for developing a market
9 that is not -- would not be generally known to competitors.

10 THE COURT: And --

11 MR. MCCARTHY: -- that competitors could use.

12 THE COURT: Has that market -- is the -- are there
13 efforts to develop that market underway?

14 MR. MCCARTHY: Well, you know -- as it sits right
15 now, Your Honor, I do not have the status of the efforts to
16 develop that market by the non-debtor (indiscernible).

17 THE COURT: I'm sorry. Can you say that again?

18 MR. MCCARTHY: As I sit here right now, I'm not
19 fully aware of the efforts of the non-debtor entity to
20 develop that market as it stands today.

21 THE COURT: All right. But -- so this is not an
22 entity -- is this an entity that the debtors are going to be
23 owning?

24 MR. MCCARTHY: This is not an entity the debtors
25 are going to be owning. This is an entity -- a related

1 entity, Purdue Canada -- where -- which at the time Dr.
2 Landau served as a high-ranking executive of. I believe
3 he's (indiscernible) advisor.

4 THE COURT: So if -- is the debtor under some sort
5 of confidentiality agreement with that entity not to reveal
6 this type of information?

7 MR. MCCARTHY: I don't believe so, Your Honor.

8 THE COURT: Okay. So I don't -- I actually don't
9 think this fits, then, within 107(b)(1). It doesn't affect
10 the debtor going forward as far as I can tell from what
11 you've described to me, so I don't believe this should be
12 covered.

13 MR. MCCARTHY: Your Honor, one point is that the
14 rule itself doesn't just protect, I suppose, the debtor. It
15 also protects other entities.

16 THE COURT: I understand, but they're not --
17 again, the debtor isn't implementing the strategy itself and
18 there's no indication that there's any agreement to keep
19 this confidential with the other entity, so I just don't,
20 you know -- based on what I know, this was -- this struck me
21 as something that might have been a good idea at the time
22 but that the debtor didn't implement, now can't implement,
23 and whether it's going to implemented elsewhere or not is an
24 open question because the entity is not under the debtor's
25 control.

1 MR. MCCARTHY: Understood, Your Honor.

2 THE COURT: Okay. Okay. And the last one here
3 is, I think, on page 12, and again, this one seemed to me to
4 be covered clearly by 107(b)(1) as it deals with projected
5 technologies, investments, and the like in specific -- in a
6 specific product that I'm assuming because it and not the
7 other two products is one that you believe still requires to
8 be kept confidential.

9 MR. MCCARTHY: That's right, Your Honor.

10 THE COURT: Okay. So that's covered by 107(b)(1).
11 Now it does refer to Purdue Canada, but, again, this is much
12 more specific than sort of the general -- and an actual
13 initiative -- that was already underway as opposed to the
14 more general description on page 9 that we discussed.

15 So I think that covers Exhibit 137. I appreciate
16 that those actions to the other exhibit are more numerous,
17 but I think we ought to cover them here which is Exhibit 123
18 which is a June 8, 2016, apparently, power point
19 presentation entitled Media Update. I think the first
20 proposed redaction is on page 5 and it is clearly forward-
21 looking and refers to the LLE point for specific identified
22 products so to me, that would be covered by my prior ruling
23 with regard to the other exhibit.

24 The next redaction, I believe, is on page 9, and
25 this was not so clear to me. Why would this disclosure or

1 disclosure of this item put the debtor as a competitive
2 disadvantage?

3 MR. MCCARTHY: Your Honor, this graph actually a
4 is a -- in many ways a visual reflection of the loss of
5 exclusivity point. If you could --

6 THE COURT: I'm sorry. Could you -- you're coming
7 through a little garbled. If you could -- I didn't hear you
8 after, this graph is a, and then I couldn't really hear you.

9 MR. MCCARTHY: It visually depicts potential
10 effects of the loss of exclusivity point that we discussed
11 earlier, and looking at it, it would be clear that that was
12 driving the depiction, and LOE is referenced on the right-
13 hand side of the graph as well.

14 THE COURT: It is? I don't see that, but I will
15 take your word for it.

16 MR. MCCARTHY: Is the number at the bottom of the
17 slide 5?

18 THE COURT: No, this is slide 9 I'm talking about,
19 page 9.

20 MR. MCCARTHY: Understood, Your Honor. It's the -
21 - so it's the same explanation. It's not referenced but the
22 slide itself makes clear what the effect of the LOE will be.

23 THE COURT: It reflects that? Okay.

24 MR. MCCARTHY: Yes.

25 THE COURT: All right. Very well.

1 MR. MCCARTHY: As you compare the slide at page 5
2 and page 9 you can see that (indiscernible) similar.

3 THE COURT: I see. Got it. They are -- they do
4 track each other. Okay. And I'm assuming, therefore, that
5 the answer is the same on slide 12 except slide 12 is --

6 MR. MCCARTHY: That's right, Your Honor.

7 THE COURT: -- in more detail with regard to
8 specific products. So --

9 MR. MCCARTHY: Much more detail, Your Honor, but
10 the same answer.

11 THE COURT: Okay. So I understood the rationale
12 behind the redaction -- the partial redaction -- on slide 13
13 except I want to confirm that -- well, I -- the redaction
14 lists specific products. The heading for it says, approval
15 requested this week, which, at least, left in my mind that
16 impression that these products are now public and I wasn't
17 sure why, therefore, it needing to be redacted.

18 MR. MCCARTHY: Your Honor, so these are, as I
19 understand it, potential deals that the companies was
20 thinking about pursuing.

21 THE COURT: All right. So when it says approval
22 (indiscernible) --

23 MR. MCCARTHY: (indiscernible) counterparty.

24 THE COURT: So when you say approval is requested
25 this week, those are not public approvals? Those are

1 approvals requested of the board or someone like that?

2 MR. MCCARTHY: I understand management or the
3 board (indiscernible) is this develop an opportunity and
4 pursuing it with those counterparties. Those opportunities
5 would be in (indiscernible) or subject to confidentiality
6 agreement as well between the counterparties.

7 THE COURT: Okay. So these are not approvals that
8 publicly requested to take certain actions, like anti-trust
9 approvals or drug approvals, things like that?

10 MR. MCCARTHY: Absolutely not, Your Honor.

11 THE COURT: Okay. So I think the next redaction
12 is all the way up to page 49 unless I'm missing something.

13 MR. MCCARTHY: That's right, Your Honor.

14 THE COURT: And I better -- okay, good. I better
15 make sure I've printed it out accurately. And again, this
16 is a partial redaction in a column headed, examples of
17 current projects. So is this current project something that
18 remains confidential even though this is, you know, four-
19 and-a-half years old -- four years old?

20 MR. MCCARTHY: Yes, Your Honor. And this is not -
21 - on 49 and 50, these are not necessarily current projects
22 but, you know, relationships between -- like a very
23 important aspect of -- just speaking about it generically --
24 Purdue's business where if this was divulged, it could
25 impact that and harm the competitors and their ability to

1 conduct their business and get revenue.

2 THE COURT: And I'm sorry -- well, I wanted to get
3 to the next page but -- let's just turn to that. These are
4 things that are ongoing? I'm just confused. Again, my
5 question is, these are -- both of these things describe
6 action plan. Are these action plans being fulfilled or are
7 they to be fulfilled?

8 MR. MCCARTHY: Your Honor, these relate to certain
9 issues concerning formulary status which is very important
10 for the debtor's business, the ability to be on formularies.
11 And to the extent this was released, it would cause
12 reconsideration in any way of that status, it would be
13 extremely detrimental -- like competitively harmful -- to
14 the debtors.

15 THE COURT: Okay.

16 MR. MCCARTHY: Much in the same way in Orion it
17 wasn't certainly -- the competitors certainly used the
18 information. I think they could here. But Orion took a
19 much broader view of competitive harm and that case involved
20 a licensing agreement which if released would harm the
21 entity, Orion Pictures', ability to negotiate favorable
22 agreements with its customers which would in turn advantage
23 competitors. Much of the same rationale is applicable here
24 with respect to these two slides. Sorry, 49 and 52.

25 THE COURT: All right. Well, indulge me. Give me

1 a definition of formulary.

2 MR. MCCARTHY: Formulary at the highest level I
3 understand it is the way like how Purdue's products are
4 covered by various insurance companies.

5 MR. HUEBNER: Mr. McCarthy, if you don't mind,
6 since this is so critical and I know we're ranging far
7 afield and I've had a bunch of meetings that might help, let
8 me jump in for a second.

9 Your Honor, it's almost difficult to overstate how
10 important formulary is, so sort of give an insurance company
11 the product of a given pharmaceutical company can either be
12 not available at all -- a preferred product to which
13 consumers are kind of, you know, steered in a way, not
14 exactly because obviously the prescriber ultimately has
15 choice. They can be tier one. They can be tier two. So
16 you might, you know, recommend (indiscernible) your parents
17 for, you know, their annual sort of Medicare Part D, one of
18 the main things you compare is the drugs that they take,
19 under which of the parts of the insureds, you know, are you
20 considered preferred, better pricing, not available at all.
21 So if you have, you know, a parent who's a diabetic, if it's
22 not on formulary insurance plan A, you just won't even
23 consider that plan, that that's the drug (indiscernible) so
24 that it's covered, so you'd instead go with insurance plan
25 B. And so it is of inestimable importance to the running of

1 Purdue's business and its ability to generate revenue to pay
2 all the stakeholders in this case to the best of the
3 debtor's ability, you know, both during and after the
4 proceeding.

5 THE COURT: Because of its direct tie and these
6 projects to relationships with the insurers.

7 MR. HUEBNER: Exactly. Being taken off of the
8 formulary is an extraordinarily negative event. Being
9 downgraded on formulary is a negative event and winning
10 preferred status would or being up-tiered on formulary for a
11 major insurer is a very major positive event, obviously, in
12 all events, assuming that, you know, it's being done
13 properly and full compliance with law and the like. But,
14 yes, that's kind of, you know -- I don't want to draw
15 analogies because I'm nervous (indiscernible) especially
16 with tier two to reach (indiscernible) analogies, but it
17 certainly radically changes the prescriber and the ultimate
18 patient's kind of access to the medications as compared to
19 (indiscernible).

20 THE COURT: All right. And these two slides
21 reference initiatives that the debtors were undertaking or
22 were going to undertake to insure ongoing proper, in their
23 view, formulary treatment.

24 MR. HUEBNER: Yeah.

25 THE COURT: All right. I believe that they're

1 properly redacted. 74 is really a repeat of the earlier --
2 I'm sorry -- forgive me. 74 is really a repeat of an
3 earlier discussion we had on --

4 MR. MCCARTHY: That's right, Your Honor. It's --

5 THE COURT: (indiscernible)

6 MR. MCCARTHY: -- actually the exact same --

7 THE COURT: It's the really the exact same one
8 that I've already ruled on it so we don't need to cover that
9 again.

10 MR. MCCARTHY: And the next slide is the similar
11 rationale except that the slide (indiscernible) --

12 THE COURT: Which is 109, I think. And --

13 MR. MCCARTHY: The redactions to 109, Your Honor,
14 deal with the specific products -- information concerning
15 them that are being developed with third parties. It's just
16 a confidentiality agreement and you'll see on the right-hand
17 of the -- the names of the (indiscernible) but the
18 information -- it's of joint information between Purdue and
19 the other entities -- (indiscernible) confidentiality so we
20 redacted the names.

21 THE COURT: And these initiatives that are ones
22 where there's competition in the market?

23 MR. MCCARTHY: Yes, Your Honor.

24 THE COURT: All right. So that would be covered
25 also by 107(b)(1). And then slide 120, these are again the

1 transactions in the pipeline and I'm going to have the same
2 question which is, these apparently have not been announced?

3 MR. MCCARTHY: Your Honor, these are the same
4 exact transactions actually that are on the other slide, I
5 believe.

6 THE COURT: And again, they weren't announced
7 then?

8 MR. MCCARTHY: No.

9 THE COURT: Okay. They're still potential, right?
10 They're not -- they haven't fallen by the wayside?

11 MR. MCCARTHY: I don't know whether these deals
12 are being actively pursued, Your Honor, although they would
13 be subject to, in a normal course, confidentiality
14 agreements at the time of party which typically in the
15 pharmaceutical industry and I understand it have five- and
16 sometimes ten-year terms (indiscernible).

17 THE COURT: Well, just -- I mean, the existence of
18 these deals would be -- put it differently. If the deal
19 fell through, the very existence of discussing them would be
20 covered by a confidentiality agreement?

21 MR. MCCARTHY: I understand that, Your Honor.
22 That's what I understand, Your Honor.

23 THE COURT: To highlight, I guess, the -- or
24 protect them from being targets from other parties, I
25 suppose.

1 MR. MCCARTHY: that's right. And that's why, as
2 we understand it, the deals were put under NDA for -- to
3 even begin discussions.

4 THE COURT: Okay. All right. This slide is
5 covered then. 121 is again a reference that has been dealt
6 with earlier. 122, the entire slide is deleted and just
7 explain for me -- to me generically what the rationale for
8 deleting the slide is.

9 MR. MCCARTHY: Your Honor, these are net sales
10 projections that, if you look across, first the debtor --
11 this is confidential information (indiscernible) the debtors
12 don't know. In addition, it also shows, if you take a look
13 at the numbers and the way they track across -- if you take
14 the first line, the loss of exclusivity point we discussed
15 earlier.

16 THE COURT: Okay. They also cover this year
17 through 2025.

18 MR. MCCARTHY: Yes.

19 THE COURT: So I believe this would be covered as
20 well by 107(b). Page 124 has the same --

21 MR. MCCARTHY: These, again, are the same six or
22 seven --

23 THE COURT: Right. (indiscernible) so that would
24 be covered. 125 is essentially the same chart --

25 MR. MCCARTHY: That's right, Your Honor.

1 THE COURT: -- reflecting the information that
2 we've already discussed would be properly protected. 127
3 deals with the same parties that have previously been
4 identified and protected. 128 does as well as does 129.

5 MR. MCCARTHY: And 130 (indiscernible).

6 THE COURT: (indiscernible) does 130. And then
7 142 -- yeah, it wasn't clear to me why this -- these -- part
8 of these two columns were redacted. Is this also reflect
9 (indiscernible) or is it something else?

10 MR. MCCARTHY: No, Your Honor. We're looking at
11 slide 131 just to be clear.

12 THE COURT: No, 142.

13 MR. MCCARTHY: Oh, 142. This slide has other
14 information, not -- doesn't deal with loss or exclusivity
15 but things like rebate rates and royalty expenses that are
16 for -- core to the debtor's business and if known at all to
17 competitors would -- could, a, impact the debtor's ability
18 to negotiate with counterparties, and would also invaluable
19 to competitors.

20 THE COURT: And that goes back to 2017?

21 MR. MCCARTHY: Yes, Your Honor.

22 THE COURT: They haven't changed?

23 MR. MCCARTHY: They could change, Your Honor, but,
24 as I understand it, even the historical look-back over that
25 period is -- and the projections there could be used by

1 competitors.

2 THE COURT: Because these things are negotiated.

3 MR. MCCARTHY: that's right, Your Honor.

4 THE COURT: The royalty expense, that is.

5 MR. MCCARTHY: Royalty expenses and rebates
6 ultimately (indiscernible) up the percentage of sales, yes.

7 THE COURT: Okay. I agree with that.

8 MR. MCCARTHY: In the footnote, just to be clear,
9 there's a redaction to a particular royalty, a counterparty
10 to that royalty --

11 THE COURT: Right. (indiscernible)

12 MR. MCCARTHY: -- and the (indiscernible). The
13 second one deals with loss of exclusivity.

14 THE COURT: Right. Okay. And a similar point for
15 144. So --

16 MR. MCCARTHY: That's right, Your Honor.

17 THE COURT: -- I think that's the last proposed
18 redaction, right? so --

19 MR. MCCARTHY: That is, Your Honor.

20 THE COURT: All right. So again, consistent with
21 the case law going back to Orion Pictures, I found that most
22 of these as I've indicated are properly protected under
23 107(b)(1). The debtors have narrowed them down, I believe,
24 satisfactorily to cover things that truly are disclosures
25 that put them in a disadvantage in their business going

1 forward.

2 MR. MCCARTHY: Your Honor, could I revisit the
3 Canada redaction. Just got an email from the debtors on
4 that. Just to flesh out my answer there and that's in Price
5 Exhibit 137. I believe it's the last redaction we
6 discussed. I think the debtors do believe it is a viable
7 opportunity that could be explored and while we haven't
8 spoken to Purdue Canada about that opportunity, it was an
9 opportunity that I think remains viable today and was
10 written about while Dr. Landau was in fact a chief executive
11 officer of Purdue Canada.

12 THE COURT: But how do the debtors -- how would
13 they be able to pursue that opportunity if they are no longer
14 in control of Purdue Canada?

15 MR. MCCARTHY: I don't think, Your Honor, that
16 Section 107 is confined to the opportunities the debtors can
17 pursue. It protects confidential, commercial information of
18 an entity. And if you said that --

19 THE COURT: But --

20 MR. MCCARTHY: -- Dr. Landau was --

21 MR. JOSEPH: Your Honor, this Gregory Joseph for
22 the Raymond Sackler family, if I may.

23 THE COURT: Okay.

24 MS. JOSEPH: We have not seen this and as the co-
25 owners ultimately of Purdue Canada, we would ask for an

1 opportunity to see what's been redacted so that we can make
2 a determination under 107(b)(1) if we may. We simply don't
3 know what's being discussed.

4 THE COURT: Okay.

5 MR. HUEBNER: Your Honor, let me -- sorry.
6 (indiscernible) Let me just be very clear. This is not
7 primarily or probably at all a debtor opportunity. Your
8 Honor, you are quite right. I think the point is a
9 different one which is, (indiscernible) at the time was CEO
10 of Purdue Canada which has never been part of the debtors,
11 has never been owned by the Purdue. It has never been under
12 any of the debtors as a, just, separate Sackler owned
13 entity. This is about an opportunity that I think they were
14 considering exploring that may still be viable for them to
15 explore. It's not really about the debtors. I just wanted
16 to be sure (indiscernible) that's actually important.

17 THE COURT: And my question was whether it's
18 really even viable for --

19 MR. HUEBNER: The problem is --

20 THE COURT: -- Canada and I guess Mr. Joseph's
21 point is Purdue Canada hasn't seen this so (indiscernible) -
22 -

23 MR. SKAPOF: Your Honor, this is Marc Skapof of
24 Royer Cooper Cohen & Braunfeld. We represent the IACs,
25 among which is Purdue Canada. So we not seen this

1 unredacted document either, similar to Mr. Joseph. You
2 know, we would at least like the opportunity to show it --
3 to review it ourselves and also for Purdue Canada to
4 determine, you know, whether this is something that they
5 have an interest, you know, in keeping redacted, you know,
6 whether it's for now or, you know, on a more permanent
7 basis.

8 THE COURT: All right. I'll give you that
9 opportunity although I have to say I'm pretty skeptical
10 given the fairly general nature of what's disclosed here.
11 But I'll give you that opportunity before the next hearing.

12 MR. HUEBNER: Your Honor, and that's exactly where
13 I was going, Your Honor, which is --

14 THE COURT: Yes.

15 MR. HUEBNER: -- just not a debtor thing. This is
16 another entity's information and they've -- haven't seen it
17 yet and (indiscernible) suggest that they get the chance.
18 And they may say they're fine with it and it can be
19 unredacted and -- in which case, we're happy to do so. And
20 if they have an issue, they can (indiscernible) or talk to
21 the media folks or the like and obviously (indiscernible)
22 perchance (indiscernible) is needed, then we'll go back to
23 being an observer on this one page and I think the rest is
24 already resolved.

25 THE COURT: Okay. All right. Very well. So my

1 ruling is final except on that one point and the debtors
2 will promptly show this page to the appropriate people at
3 Purdue Canada and we'll see if they have an issue and if
4 they do, they can address it at the next hearing -- So
5 regarding its disclosure.

6 Let me go back, then, to the media intervener's
7 motion and the Sackler family's two responses. I have
8 carefully considered the response by the Mortimer Sackler
9 family which not only raising the 107(b)(1) exception to the
10 generally -- to the requirement of the disclosure publicly
11 of filed documents on under 107(a) of the bankruptcy code.
12 Also asserts an exception under 107(c) of the bankruptcy
13 code which, again, permits the bankruptcy court for cause to
14 protect -- and this says "may protect" -- an individual with
15 respect to the following types of information to the extent
16 the Court finds that disclosure of such information would
17 create undue risk of identity or other unlawful injury to
18 the individual or the individual's property. And the
19 subsection of that section relied upon is subsection B,
20 namely other information contained in a paper described in
21 subparagraph A which is any information -- any means of
22 identification as defined in section 1028(d) at title 18, a
23 personally identifiable information contained in a paper
24 filed or to be filed in a case under this title.

25 The other information here that the Mortimer

1 Sackler family contends should be protected is the identity
2 -- the name -- of, quote, public facing businesses or
3 entities owned in whole or in part by the Sacklers. The
4 objection by the Mortimer Sackler family does not identify
5 further even generically those public facing businesses and
6 further, identifies as a risk of providing an injury to
7 property as clarified on the record, namely the individual
8 family members interest in those business, i.e., ownership
9 interests in those businesses, various threats made on
10 social media against the Sacklers personally.

11 The case law is clear that a request to seal under
12 107 of the bankruptcy code is extraordinary relief. There's
13 a strong presumption and policy of open access to court
14 records, including especially in the bankruptcy context and
15 the exceptions as enunciated in section 107(b) are to be
16 construed in a narrow way such that the burden of proof is
17 heavy, requiring an extraordinary circumstance or compelling
18 need (indiscernible) generally video software dealer's
19 association, (indiscernible) Orion Pictures, Corp., In re
20 Orion Pictures, Corp., 21 F3rd 2427 2nd Circ 1994 and a
21 whole host of other cases, including most recently, Motors
22 Liquidation Company Avoidance Action Trust v JPMorgan, Chase
23 Bank, NA (In re Motors Liquidation Company 561 B.R. 3642
24 Bankruptcy SDNY 2016).

25 The case law under section 106 -- I'm sorry --

1 107(c) is fairly limited and generally addresses and
2 protects personally identifying information that would lead
3 to identity theft or other unlawful injury to the individual
4 or the individual's property, the leading case, I believe,
5 being, In re AC&S Inc., 775 Fed Appx 78 3rd Cir August
6 19, 2019 and the very well-reasoned comprehensive district
7 court opinion affirmed by that decision which is captioned In
8 re Motion Seeking Access to 2019 Statements 585 B.R. 733 D
9 Delaware 2018.

10 That appellate court decision construing actually
11 the leading second circuit decision, In re Orion Pictures
12 Corp., which I've already cited, states that section 107 as
13 a whole codified the common law and evidenced Congress's
14 strong desire to preserve the public's right of access to
15 judicial records and bankruptcy proceedings, setting forth
16 certain specific enumerated exceptions, recognizing that the
17 public's right of access to judicial records is not
18 absolute. The court goes to state -- this is the third
19 circuit -- "in doing so, Congress specifically authorized
20 courts to protect any means of identification. Moreover,
21 every court has supervisory power over its own records and
22 files and access has been denied where court files might
23 have become a vehicle for improper purposes" 735 Fed
24 Appx at 79 through 80. Footnote 5 in that discussion
25 finds favorably *Evans v United States*, (indiscernible) U.S.

1 255 259 through 60 for the proposition that when Congress
2 codifies the common law, the latter informs construction of
3 the statute.

4 I want to ask whoever is not on mute to put their
5 phone on mute.

6 (Aside conversation)

7 THE COURT: Please put your phone on mute or we
8 will disconnect you.

9 Ry, can you put that person on mute? Can you
10 identify here?

11 MR. MCCARTHY: I believe she said her name was
12 (indiscernible), Your Honor, because she said
13 (indiscernible). I don't know if that helps.

14 (Aside conversation)

15 THE COURT: All right. Thank you. Let me
16 continue with my ruling. And, I believe that, if in fact a
17 proper showing had been made here the relief would be
18 warranted, albeit, the relief would be to protect a person's
19 equity interests in a company. I further believe that
20 because one is not focusing on more tangible property or the
21 person's own safety, that showing should be higher than the
22 already difficult showing required by the Second Circuit and
23 the other case law. I conclude that the Mortimer Sackler
24 Family has not made such a showing in connection with the
25 objection filed on February 7th. I simply do not have

1 enough information as to the risk to the property itself,
2 which includes or would have to include an assessment of the
3 nature of that property, which, as I said before, except in
4 the most generic terms has not been identified. I also
5 agree with counsel for the Movant, Media Intervenors, that
6 while the statute is forward-looking, past behavior is
7 relevant and there is no record of unlawful activity
8 directed against any entities or property owned by the
9 Mortimer Sackler Family identified in the supporting
10 Declaration to the 107(c) Objection. There are, I believe,
11 clearly hostile and unwarranted threats identified on social
12 media, but they go to the Sacklers individually, not their
13 property and on this record, I'm not prepared to -- except
14 in one instance, rather, which refers to a house -- I'm not
15 prepared to grant the relief on this record as to the mere
16 identity of their public facing businesses.

17 I will note further that, to the extent as the
18 Third Circuit did and interpreted the Second Circuit also as
19 permitting, I should interpret or apply a common law gloss
20 to 107 and here, particularly, 107(c). It does not appear
21 to me that the disclosure would be for an improper purpose
22 and one that would only be one that would lead to harm to
23 the Sacklers' property. As I noted during oral argument,
24 to the extent and nature of that property has been a central
25 issue in this Chapter 11 case. I recognize that that

1 disclosure here is in the context of a motion filed where
2 the identity of these entities is remotely, if at all,
3 relevant. But it is relevant, generally, in the bankruptcy
4 case. So, I will grant the Media Intervenors Motion with
5 respect to the names of the public facing businesses. As I
6 noted also, the agreement by the Sackler families not to
7 seek redaction or sealing with respect to the other
8 information covered by the Movant, Media Intervenors, should
9 be effectuated now. Which would leave, the really quite
10 modest at this point, remaining issue as to the disclosure
11 of the identities of current and prospective counterparties
12 to the Sacklers in commercial settings. Again, the burden
13 here and to support sealing is a high one, as I've already
14 noted, but as the statute says, if an exception is shown,
15 the Court shall, it has no discretion otherwise, protect the
16 party, whether that is through forward action, if necessary,
17 or more limited non-disclosure. The exception relied upon
18 with respect to this information is 107(b)(1) of the
19 Bankruptcy Code to protect an entity, in this case the
20 Sackler families, with respect to a trade secret or
21 confidential research development or commercial information.
22 The Sacklers contend that the identity of their commercial
23 counterparties is commercial information for purposes of
24 Section 107(b)(1) and therefore, that it must be protected.
25 When they originally made this argument, albeit in the

1 context of many other types of information that they were
2 seeking at that point to remain under seal, they did not
3 provide factual support for it. They have since done so and
4 submitted a declaration of two witnesses and those
5 declarations, by Mr. Lowne and Mr. Vellucci both assert in
6 more than a conclusory way, that in the recent past, the
7 disclosure of unrelated commercial counterparties to one or
8 more of the Sacklers has led that commercial counterparty to
9 cease business relationships with them to redeem funds
10 invested with them and to other business transactions with
11 them. It is contended by the Movant that such a potential
12 harm is not covered by Section 107(b)(1) of the Bankruptcy
13 Code that the harm covered by Section 107(b)(1) is limited
14 to the disclosure of information that, if disclosed, would
15 put the party at a commercial disadvantage with its
16 competitors. That is clearly an accepted basis under
17 Section 107(b)(1) of the Bankruptcy Code, as specifically
18 found by the Second Circuit in the Orion Pictures case.
19 However, the statute is not confined to the entity seeking
20 protections being put at a disadvantage with its
21 competitors. And there is significant post-Orion caselaw
22 now holding to the contrary that Section 107(b)(1),
23 "protects parties from the release of information that could
24 cause them harm or give competitors and unfair advantage",
25 Gowan v. Westford Asset Management LLC (In re Dreier LLP)

1 485 B.R. 821, 823 (Bankruptcy SDNY 2013), citing for that
2 proposition, Orion Pictures 21 F.3d 27, as well as In re
3 Global Crossing, Ltd. 295 B.R. 720, 725, (Bankruptcy SDNY
4 2003), which uses the same formulation, could cause them
5 harm or give competitors an unfair advantage. This, of
6 course, doesn't change the heavy burden that our Movant
7 faces, but I believe is a more accurate reading of the
8 statute and the caselaw.

9 The Movant, Media Intervenors, also contends that
10 the information here is sought to be protected as a mere
11 embarrassment or harm to reputation based on the disclosure
12 of non-scandalous, non-defamatory information, which is
13 separately protected under 107(b)(2) and is not asserted
14 here. And that is clearly a valid legal proposition as set
15 forth in numerous decisions, including Gitto v. Worcester
16 Telegram and Gazette Corp. (In re Gitto Global Corp. 422
17 F.3d 7-8 (1st Cir. 2005) (In re MUMA Services 279 B.R. 478-
18 484 (Bankruptcy Delaware 2002) and (indiscernible)
19 Bankruptcy paragraph 107.3 (16th Edition 2020), as well as
20 under the common law, including such cases as Brown v.
21 Williamson Tobacco Corp. v. FTC 710 S.2d 1165, 1179 (6th
22 Cir. 1983) and Joy v. North 692 F.2d 880, 893 (2d Cir.1982).
23 The issue here is whether, in fact, this disclosure is to
24 prevent embarrassment or merely harm to reputation that
25 would rise to the level of scandalous or defamatory

1 information, which it clearly doesn't. I've considered that
2 issue carefully and believe that on these facts,
3 particularly given that counsel for the Movant had not had
4 the opportunity to cross-examine the Declarants, cannot
5 answer it on this record. It would appear to me that, if
6 the reason for the non-disclosure is as the declarations
7 state, solely because the counterparties would, based on a
8 purely commercial determination, cease doing business with
9 the Sacklers, it would appear to me that it would be --
10 their own identity would be properly protected commercial
11 information since they have no reason for their taking that
12 action as predicted by the two declarations, would be to
13 avoid, as a commercial matter, their being reported on as
14 engaging in business with the Sacklers. On the other hand,
15 if the rationale for ceasing doing business is that they
16 would be exposed as being involved with the Sacklers in an
17 improper way, whatever that would be, including, for
18 example, to shield the Sacklers from their creditors, the
19 information would (indiscernible) quite neatly into the fact
20 pattern of In re Food Management Group, LLC 359 B.R. 543
21 (Bankruptcy SDNY 2007) and similar cases where the fact that
22 the party didn't like the disclosure tied directly into the
23 party's role in the bankruptcy case or related to the
24 administration of a bankruptcy case and therefore, was not
25 purely commercial. We simply don't know enough, and the

1 Media Intervenors should have the opportunity to explore
2 what side of the line the disclosure of these parties' names
3 would play.

4 It is argued that, because of the tangential
5 relationship of this disclosure to the underlying motion
6 that the Movants seek to have unsealed, should lead the
7 Court to balance the interests of the Sacklers in not having
8 their assets depleted by them losing investment
9 opportunities as against, and favorably as against, the
10 limited interest of the media in reporting the names of
11 these counterparties. A substantial body of caselaw says
12 that that balancing task doesn't apply in bankruptcy cases
13 and that 107 takes over the field. In addition to the Gitto
14 Global case that I previously cited. See also In re Roman
15 Catholic Archbishop of Portland in Oregon 661 F.3d 417-430
16 (9th Circuit 2001), (indiscernible) 132 Supreme Court 1867
17 2012 and Neil v. Kansas City Star In re Neil 461 F.3d 1048
18 (8th Circuit 2006), as well as In re Food Management Group
19 LLC 359 B.R. at 354-55 and the G.M. case that I previously
20 cited. It appears to me that the Second Circuit has not
21 decided this issue. They did not do so in Orion Pictures
22 and, in fact, if the Third Circuit's interpretation of Orion
23 Pictures is accurate, that I previously quoted. On the
24 other hand, I think the balancing, if one should, at all,
25 balance here, is not a narrow balancing looking at the

1 context of the underlying motion that's led to this issue,
2 which is not, at this point, being pursued by the Unsecured
3 Creditors' Committee or the relevance of the information to
4 that motion. But generally, the purpose of it in contrast
5 to the harm that its publication would cause to commercial
6 dealings. And here, although the statute doesn't require
7 this, it refers to any entity and not just the Debtor, I do
8 accept, as I did back in May of 2020, the Sacklers' argument
9 that, at least while they are in good faith pursuing a
10 global settlement in this case, any harm to their assets run
11 the serious risk of harming recoveries by creditors of this
12 case since those assets are being proposed, in large
13 measure, to be distributed to creditors in this case, to, as
14 the parties have already negotiated, alleviate the opioid
15 crisis. So, it would appear to me that the harm here could
16 be deadly destructive.

17 On the other hand, if the purpose of disclosure is
18 more than simply based on idle curiosity, giving parties the
19 opportunity to exercise cancel culture, I would seriously
20 wonder whether the motion should be granted and would lean
21 heavily towards, instead shielding the exposure. I would
22 urge the parties to consider, as is consistent with the
23 caselaw, a lesser form of disclosure, namely describing
24 these entities generically as opposed to by their specific
25 name, which most recently, by District Judge Laura Taylor

1 Swain, was pointed out as a proper approach to these types
2 of issues, namely having the most disclosure that one could
3 have without tripping over 107, being one. See In re
4 Financial Oversight and Management Board 406 F.3d 180-188
5 (DPR 2019). I do believe, whether it's either under 106(c)
6 or, more likely, under 107(b)(1), Second Circuit caselaw as
7 to an improper purpose for disclosure still exists
8 (indiscernible) 107's enactment. Again, I don't have any
9 evidence to show that the effect of this disclosure will be
10 used solely for an improper purpose and that's the reason
11 why I'm adjourning the hearing as to these remaining limited
12 sealed -- this remaining sealed information. So, I hope
13 that the parties will now review the substantial amount of
14 information that has been, or will be, unsealed, based on my
15 rulings today and will address whether they want to pursue
16 any evidentiary hearing I'm allowing them, namely the
17 examination of these two declarants. They relieve further
18 or take up the notion of generic disclosure of these
19 counterparties as opposed to their specific identity. But
20 in any event, I'll decide that remaining issue if the
21 parties want me to decide it after taking evidence in the
22 form of cross-examination and re-direct of the two
23 witnesses.

24 So, I'll ask Ms. Townsend to submit an Order
25 granting the relief that I have granted, memorializing the

1 agreement to release the other information and adjourning
2 the hearing to permit cross-examination of the two
3 declarants. You don't have to formally settle that Order,
4 but you should run it by counsel for the Sacklers and the
5 Debtor before you email it to Chambers so they can make sure
6 it's consistent with my ruling and please copy them on it,
7 as well, when you -- copy them on the email when you send it
8 to Chambers.

9 MS. TOWNSEND: We'll do so, Your Honor.

10 THE COURT: Okay. Thank you very much. I think
11 that concludes this morning's hearing, it now being 1, but I
12 don't think there are any other matters on the agenda. Is
13 that correct?

14 MAN: Yes, Your Honor. I believe that it is, and
15 we are next before you on March (indiscernible).

16 THE COURT: Okay, very well.

17 MR. JOSEPH: Excuse me, Your Honor. Before
18 adjournment, this is Gregory Joseph for the Raymond Sackler
19 Family. We did not have an opportunity to argue on the
20 107(b)(1), which is perfectly fine on the commercial
21 counterparties since it's being deferred, but I would like
22 to offer into evidence the two Declarations of Mr. Lowne and
23 Mr. Vellucci?

24 THE COURT: Well, I will -- because they will be
25 cross-examined, I'll put that in at that point.

1 MR. JOSEPH: That's fine, Your Honor and at that
2 point, will I be given an opportunity to argue it, even if
3 there is no cross --

4 THE COURT: Well, both sides will be given an
5 opportunity after the examination of the witnesses.

6 MR. JOSEPH: And what if the Media Intervenors
7 decide not to cross-examine?

8 THE COURT: Well, in all likelihood, I'll grant
9 the motion then.

10 MR. JOSEPH: Thank you, Your Honor.

11 THE COURT: Okay. I mean, I'm sorry. We have to
12 be clear on what motions we're talking about. In all
13 likelihood, I will grant your motion or your request to keep
14 that information sealed.

15 MR. JOSEPH: Understood, Your Honor. Thank you
16 very much.

17 THE COURT: Okay. Although I might say that, in
18 all likelihood, I will grant it in the form of having these
19 entities be described generically as opposed to revealing
20 their actual names. But we'll see where we are. The
21 parties have been able to work out, at this point, about
22 99.9 percent of the issues originally raised by the Media
23 entities in a way that has led to the disclosure. With that
24 99.9 percent of the information, we'll see where we get with
25 these last, what are they, 17 names. Okay, anyone else?

1 All right. Thank you, everyone.

2 MS. TOWNSEND: Thank you, Your Honor.

3 MR. JOSEPH: Thank you, Your Honor.

4 (Whereupon these proceedings were concluded)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Sonya M. Ledanski Hyde". The signature is written in dark ink and is positioned above the printed name.

Sonya Ledanski Hyde

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Date: February 18, 2021